78A-1-101. Courts of justice enumerated -- Courts of record enumerated.

(1) The following are the courts of justice of this state:

(a) the Supreme Court;

(b) the Court of Appeals;

(c) the district courts;

(d) the juvenile courts; and

(e) the justice courts.

(2) All courts are courts of record, except the justice courts, which are courts not of record.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-1-102. Trial courts of record -- Divisions.

The district and juvenile courts shall be divided into eight geographical divisions:

(1) First District - Box Elder, Cache, and Rich Counties;

(2) Second District - Weber, Davis, and Morgan Counties;

(3) Third District - Salt Lake, Summit, and Tooele Counties;

(4) Fourth District - Utah, Wasatch, Juab, and Millard Counties;

(5) Fifth District - Beaver, Iron, and Washington Counties;

(6) Sixth District - Garfield, Kane, Piute, Sanpete, Sevier, and Wayne Counties;

(7) Seventh District - Carbon, Emery, Grand, and San Juan Counties; and

(8) Eighth District - Daggett, Duchesne, and Uintah Counties.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-1-103. Number of district judges.

The number of district court judges shall be:

(1) four district judges in the First District;

(2) 14 district judges in the Second District;

(3) 28 district judges in the Third District;

(4) 13 district judges in the Fourth District;

(5) five district judges in the Fifth District;

(6) two district judges in the Sixth District;

(7) three district judges in the Seventh District; and

(8) two district judges in the Eighth District.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-1-104. Number of juvenile judges and jurisdictions.

The number of juvenile court judges shall be:

(1) two juvenile judges in the First Juvenile District;

(2) six juvenile judges in the Second Juvenile District;

(3) 10 juvenile judges in the Third Juvenile District;

(4) four juvenile judges in the Fourth Juvenile District;

(5) three juvenile judges in the Fifth Juvenile District;

(6) one juvenile judge in the Sixth Juvenile District;

(7) two juvenile judges in the Seventh Juvenile District; and
(8) one juvenile judge in the Eighth Juvenile District.

Amended by Chapter 32, 2010 General Session

78A-1-105. Merger of district court and circuit court.

(1) Effective July 1, 1996, the circuit court shall be merged into the district court. The district court shall have jurisdiction as provided by law for the district court and shall have jurisdiction over all matters filed in the court formerly denominated the circuit court.

(2) The district court shall continue the judicial offices, judges, staff, cases, authority, duties, and all other attributes of the court formerly denominated the circuit court.

(3) Judges of the court formerly denominated the circuit court shall:

(a) on July 1, 1996, be judges of the district court; and

(b) next stand for retention election at the first general election held more than three years after their appointment or at the general election held in the sixth year after their last retention election, as applicable.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-1-106. Transition clause -- Recodification of Title 78.

For purposes of a matter pending in any court beginning February 7, 2008 through August 31, 2008, citation to an appropriate section in the previous Title 78, Judicial Code, shall be considered a proper citation to the corresponding section in Title 78A, Judiciary and Judicial Administration, or Title 78B, Judicial Code.

Enacted by Chapter 123, 2008 General Session

78A-1-107. Savings clause -- Recodification of Title 78.

The provisions of Title 78A, Judiciary and Judicial Administration, and Title 78B, Judicial Code, are considered a continuation of the previous Title 78, Judicial Code. No loss of rights, interruption of jurisdiction, or prejudice to matters pending in any court on February 7, 2008 shall result from the enactment of Titles 78A and 78B. With respect to the organization of the courts, the offices of all officers and employees, shall be construed as continuations of the previous Title 78, Judicial Code. The tenure of justices, judges, justices of the peace, officers, and employees of the courts in office on February 7, 2008 is not affected by its enactment.

Enacted by Chapter 123, 2008 General Session

78A-2-101. Title.

This chapter is known and cited as the "Judicial Administration Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-102. Purpose.

The purpose of this chapter is to create an administrative system for all courts of this state, subject to central direction by the Judicial Council, to enable these courts to provide uniformity and coordination in the administration of justice.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-103. Definitions.

As used in this chapter:

(1) "Administrator" means the administrator of the courts appointed under Section 78A-2-105.

(2) "Conference" means the annual statewide judicial conference established by Section 78A-2-111.

(3) "Council" means the Judicial Council established by Article VIII, Sec. 12, Utah Constitution.

(4) "Courts" mean all courts of this state, including all courts of record and not of record.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-104. Judicial Council -- Creation -- Members -- Terms and election -- Responsibilities -- Reports -- Guardian Ad Litem Oversight Committee.

(1) The Judicial Council, established by Article VIII, Section 12, Utah Constitution, shall be composed of:

(a) the chief justice of the Supreme Court;

(b) one member elected by the justices of the Supreme Court;

(c) one member elected by the judges of the Court of Appeals;

(d) five members elected by the judges of the district courts;

(e) two members elected by the judges of the juvenile courts;

(f) three members elected by the justice court judges; and

(g) a member or ex officio member of the Board of Commissioners of the Utah State Bar who is an active member of the Bar in good standing at the time of election by the Board of Commissioners.

(2) The Judicial Council shall have a seal.

(3) (a) The chief justice of the Supreme Court shall act as presiding officer of the council and chief administrative officer for the courts. The chief justice shall vote only in the case of a tie.

(b) All members of the council shall serve for three-year terms.

(i) If a council member should die, resign, retire, or otherwise fail to complete a term of office, the appropriate constituent group shall elect a member to complete the term of office.

(ii) In courts having more than one member, the members shall be elected to staggered terms.

(iii) The person elected by the Board of Commissioners may complete a three-year term of office on the Judicial Council even though the person ceases to be a member or ex officio member of the Board of Commissioners. The person shall be an active member of the Bar in good standing for the entire term of the Judicial Council.

(c) Elections shall be held under rules made by the Judicial Council.

(4) The council is responsible for the development of uniform administrative policy for the courts throughout the state. The presiding officer of the Judicial Council is responsible for the implementation of the policies developed by the council and for the general management of the courts, with the aid of the administrator. The council has authority and responsibility to:

(a) establish and assure compliance with policies for the operation of the courts, including uniform rules and forms; and

(b) publish and submit to the governor, the chief justice of the Supreme Court, and the Legislature an annual report of the operations of the courts, which shall include financial and statistical data and may include suggestions and recommendations for legislation.

(5) The council shall establish standards for the operation of the courts of the state including, but not limited to, facilities, court security, support services, and staff levels for judicial and support personnel.

(6) The council shall by rule establish the time and manner for destroying court records, including computer records, and shall establish retention periods for these records.

(7) (a) Consistent with the requirements of judicial office and security policies, the council shall establish procedures to govern the assignment of state vehicles to public officers of the judicial branch.

(b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and may be assigned for unlimited use, within the state only.

(8) (a) The council shall advise judicial officers and employees concerning ethical issues and shall establish procedures for issuing informal and formal advisory opinions on these issues.

(b) Compliance with an informal opinion is evidence of good faith compliance with the Code of Judicial Conduct.

(c) A formal opinion constitutes a binding interpretation of the Code of Judicial Conduct.

(9) (a) The council shall establish written procedures authorizing the presiding officer of the council to appoint judges of courts of record by special or general assignment to serve temporarily in another level of court in a specific court or generally within that level. The appointment shall be for a specific period and shall be reported to the council.

(b) These procedures shall be developed in accordance with Subsection 78A-2-107(10) regarding temporary appointment of judges.

(10) The Judicial Council may by rule designate municipalities in addition to those designated by statute as a location of a trial court of record. There shall be at least one court clerk's office open during regular court hours in each county. Any trial court of record may hold court in any municipality designated as a location of a court of record.

(11) The Judicial Council shall by rule determine whether the administration of a court shall be the obligation of the administrative office of the courts or whether the administrative office of the courts should contract with local government for court support services.

(12) The Judicial Council may by rule direct that a district court location be administered from another court location within the county.

(13) (a) The Judicial Council shall:

(i) establish the Office of Guardian Ad Litem, in accordance with Title 78A, Chapter 6, Part 9, Guardian Ad Litem; and

(ii) establish and supervise a Guardian Ad Litem Oversight Committee.

(b) The Guardian Ad Litem Oversight Committee described in Subsection (13)(a)(ii) shall oversee the Office of Guardian Ad Litem, established under Subsection (13)(a)(i), and assure that the Office of Guardian Ad Litem complies with state and federal law, regulation, policy, and court rules.

(14) The Judicial Council shall establish and maintain, in cooperation with the Office of Recovery Services within the Department of Human Services, the part of the state case registry that contains records of each support order established or modified in the state on or after October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec. 654a.

Amended by Chapter 32, 2009 General Session

78A-2-105. Administrator of the courts -- Appointment -- Qualifications -- Salary.

The Supreme Court shall appoint a chief administrative officer of the council who shall have the title of the administrator of the courts and shall serve at the pleasure of the council and/or the Supreme Court. The administrator shall be selected on the basis of professional ability and experience in the field of public administration and shall possess an understanding of court procedures as well as of the nature and significance of other court services. He shall devote his full time and attention to the duties of his office, and shall receive a salary equal to that of a district court judge.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-106. Presiding officer -- Compensation -- Duties.

(1) The chief justice of the Supreme Court shall serve as the presiding officer of the Judicial Council. The presiding officer shall receive as additional compensation the sum of $1,000 per annum or fraction thereof for the period served.

(2) The presiding officer of the Judicial Council shall supervise the courts to ensure uniform adherence to law and to the rules and forms adopted by the council and to promote the proper and efficient functioning of the courts. The presiding officer of the council may issue orders as necessary to assure compliance with uniform administrative practices.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-107. Court administrator -- Powers, duties, and responsibilities.

Under the general supervision of the presiding officer of the Judicial Council, and within the policies established by the council, the administrator shall:

(1) organize and administer all of the nonjudicial activities of the courts;

(2) assign, supervise, and direct the work of the nonjudicial officers of the courts;

(3) implement the standards, policies, and rules established by the council;

(4) formulate and administer a system of personnel administration, including in-service training programs;

(5) prepare and administer the state judicial budget, fiscal, accounting, and procurement activities for the operation of the courts of record, and assist justices' courts in their budgetary, fiscal, and accounting procedures;

(6) conduct studies of the business of the courts, including the preparation of recommendations and reports relating to them;

(7) develop uniform procedures for the management of court business, including the management of court calendars;

(8) maintain liaison with the governmental and other public and private groups having an interest in the administration of the courts;

(9) establish uniform policy concerning vacations and sick leave for judges and nonjudicial officers of the courts;

(10) establish uniform hours for court sessions throughout the state and may, with the consent of the presiding officer of the Judicial Council, call and appoint justices or judges of courts of record to serve temporarily as Court of Appeals, district court, or juvenile court judges and set reasonable compensation for their services;

(11) when necessary for administrative reasons, change the county for trial of any case if no party to the litigation files timely objections to this change;

(12) organize and administer a program of continuing education for judges and support staff, including training for justice court judges;

(13) provide for an annual meeting for each level of the courts of record, and the annual judicial conference; and

(14) perform other duties as assigned by the presiding officer of the council.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-108. Assistants for administrator of the courts -- Appointment of trial court executives.

(1) The administrator of the courts, with the approval of the presiding officer of the council, is responsible for the establishment of positions and salaries of assistants as necessary to enable him to perform the powers and duties vested in him by this chapter, including the positions of appellate court administrator, district court administrator, juvenile court administrator, and justices' court administrator, whose appointments shall be made by the administrator of the courts with the concurrence of the respective boards as established by the council.

(2) The district court administrator, with the concurrence of the presiding judge of a district or the district court judge in single judge districts, may appoint in each district a trial court executive. The trial court executive may appoint, subject to budget limitations, necessary support personnel including clerks, research clerks, secretaries, and other persons required to carry out the work of the court. The trial court executive shall supervise the work of all nonjudicial court staff and serve as administrative officer of the district.

(3) Administrators and assistants appointed under this section shall be known

collectively as the Administrative Office of the Courts.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-109. Courts to provide information and statistical data to administrator of the courts.

The judges, clerks of the courts, and all other officers, state and local, shall comply with all requests made by the administrator or his assistants for information and statistical data bearing on the state of the dockets of the courts and such other information as may reflect the business transacted by them and the expenditure of public money for the maintenance and operation of the judicial system.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-110. Data bases for judicial boards.

(1) As used in this section, "judicial board" means any judicial branch board, commission, council, committee, working group, task force, study group, advisory group, or other body with a defined limited membership that is created to operate for more than six months by the constitution, by statute, by judicial order, by any justice or judge, by the Judicial Council, or by the state court administrator, a district court administrator, trial court executive, or by any clerk or administrator in the judicial branch of state government.

(2) The Judicial Council shall designate a person from its staff to maintain a computerized data base containing information about all judicial boards.

(3) The person designated to maintain the data base shall ensure that the data base contains:

(a) the name of the judicial board;

(b) the statutory or constitutional authority for the creation of the judicial board;

(c) the court or other judicial entity under whose jurisdiction the judicial board operates or with which the judicial board is affiliated, if any;

(d) the name, address, gender, telephone number, and county of each person currently serving on the judicial board, along with a notation of all vacant or unfilled positions;

(e) the title of the position held by the person who appointed each member of the judicial board;

(f) the length of the term to which each member of the judicial board was appointed and the month and year that each judicial board member's term expires;

(g) the organization, interest group, profession, local government entity, or geographic area that the member of the judicial board represents, if any;

(h) whether or not the judicial board allocates state or federal funds and the amount of those funds allocated during the last fiscal year;

(i) whether the judicial board is a policy board or an advisory board;

(j) whether or not the judicial board has or exercises rulemaking authority; and

(k) any compensation and expense reimbursement that members of the executive board are authorized to receive.

(4) The person designated to maintain the data base shall:

(a) make the information contained in the data base available to the public upon request; and

(b) cooperate with other entities of state government to publish the data or useful summaries of the data.

(5) (a) The person designated to maintain the data bases shall prepare, publish, and distribute an annual report by April 1 of each year that includes, as of March 1 of that year:

(i) the total number of judicial boards;

(ii) the name of each of those judicial boards and the court, council, administrator, executive, or clerk under whose jurisdiction the executive board operates or with which the judicial board is affiliated, if any;

(iii) for each court, council, administrator, executive, or clerk, the total number of judicial boards under the jurisdiction of or affiliated with that court, council, administrator, executive, or clerk;

(iv) the total number of members for each of those judicial boards;

(v) whether each board is a policymaking board or an advisory board and the total number of policy boards and the total number of advisory boards; and

(vi) the compensation, if any, paid to the members of each of those judicial boards.

(b) The person designated to maintain the data bases shall distribute copies of the report to:

(i) the chief justice of the Utah Supreme Court;

(ii) the state court administrator;

(iii) the governor;

(iv) the president of the Utah Senate;

(v) the speaker of the Utah House;

(vi) the Office of Legislative Research and General Counsel; and

(vii) any other persons who request a copy of the annual report.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-111. Annual judicial conference.

(1) There is established an annual judicial conference for all courts of this state, to facilitate the exchange of ideas among all courts and judges, and to study and improve the administration of the courts.

(2) All elections provided in this act shall be conducted during the annual judicial conference.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-112 (Superseded 05/01/13). Grants to nonprofit legal assistance organization.

Subject to legislative appropriation, the state court administrator shall, in accordance with Title 63G, Chapter 6, Utah Procurement Code, solicit requests for proposals and award grants to nonprofit legal assistance providers to provide legal assistance throughout the state to:

(1) low to moderate income victims of domestic violence; and
(2) low to moderate income individuals in family law matters.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-113. Judicial hiring freeze authorized.

(1) As used in this section, "General Fund budget deficit" means a situation where General Fund appropriations made by the Legislature for a fiscal year exceed the estimated revenues adopted by the Executive Appropriations Committee of the Legislature for the General Fund in that fiscal year.

(2) During a General Fund budget deficit, the governor, president of the Senate, speaker of the House, and chief justice of the Supreme Court, may, by unanimous vote, implement a judicial hiring freeze for judicial vacancies for:

(a) a juvenile court district with three or more juvenile court judges;
(b) a district court district with three or more district court judges;
(c) all appellate court judges; or
(d) any combination of Subsections (2)(a) through (c).

(3) In implementing a judicial hiring freeze, the governor, president of the Senate, speaker of the House, and chief justice of the Supreme Court shall:

(a) establish the length of that hiring freeze; and
(b) ensure that the hiring freeze lasts at least 90 days, but not longer than the last day of the annual general session of the Legislature.

Enacted by Chapter 175, 2010 General Session

78A-2-201. Powers of every court.

Every court has authority to:

(1) preserve and enforce order in its immediate presence;
(2) enforce order in the proceedings before it, or before a person authorized to conduct a judicial investigation under its authority;
(3) provide for the orderly conduct of proceedings before it or its officers;
(4) compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in a pending action or proceeding;
(5) control in furtherance of justice the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it in every matter;
(6) compel the attendance of persons to testify in a pending action or proceeding, as provided by law;
(7) administer oaths in a pending action or proceeding, and in all other cases where necessary in the exercise of its authority and duties;
(8) amend and control its process and orders to conform to law and justice;
(9) devise and make new process and forms of proceedings, consistent with law, necessary to carry into effect its authority and jurisdiction; and
(10) enforce rules of the Supreme Court and Judicial Council.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-202. Courts of justice -- Authority.

(1) All courts of justice have the authority necessary to exercise their jurisdiction.

(2) If a procedure for an action is not established, a process may be adopted that conforms with the apparent intent of the statute or rule of procedure.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-203. Rules -- Right to make -- Limitation -- Security.

(1) Every court of record may make rules, not inconsistent with law, for its own government and the government of its officers; but such rules must neither impose any tax or charge upon any legal proceeding nor give any allowance to any officer for service.

(2) (a) The judicial council may provide, through the rules of judicial administration, for security in or about a courthouse or courtroom, or establish a secure area as prescribed in Section 76-8-311.1.

(b) (i) If the council establishes a secure area under Subsection (2)(a), it shall provide a secure firearms storage area on site so that persons with lawfully carried firearms may store them while they are in the secure area.

(ii) The entity operating the facility with the secure area shall be responsible for the firearms while they are stored in the storage area referred to in Subsection (2)(b)(i).

(iii) The entity may not charge a fee to individuals for storage of their firearms under Subsection (2)(b)(i).

(3) (a) Unless authorized by the rules of judicial administration, any person who knowingly or intentionally possesses a firearm, ammunition, or dangerous weapon within a secure area established by the judicial council under this section is guilty of a third degree felony.

(b) Any person is guilty of violating Section 76-10-306 who transports, possesses, distributes, or sells an explosive, chemical, or incendiary device, as defined by Section 76-10-306, within a secure area, established by the Judicial Council under this section.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-204. Judicial Council to approve court seals.

The Judicial Council shall approve a seal for all courts of justice.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-205. When seal is affixed.

The seal of the court need not be affixed to any document of the court, except to:

(1) a writ;

(2) a certificate of the probate of a will, or of appointment of an executor, administrator, or guardian; or

(3) the authentication of:

(a) a copy of a record or document on file with the court; or

(b) the signature of an officer of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-206. English language for proceedings.

Judicial proceedings shall be conducted in the English language.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-207. Domestic relations cases -- Party designation.

Parties in domestic relations cases, including divorce, annulment, property division, child custody, support, parent-time, adoption, and paternity, shall be designated as petitioner and respondent.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-208. Sittings of courts -- To be public -- Right to exclude in certain cases.

(1) The sittings of every court of justice are public, except as provided in Subsections (2) and (3).

(2) The court may, in its discretion, during the examination of a witness exclude any and all other witnesses in the proceedings.

(3) In an action of divorce, criminal conversation, seduction, abortion, rape, or assault with intent to commit rape, the court may, in its discretion, exclude all persons who do not have a direct interest in the proceedings, except jurors, witnesses and officers of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-209. Sheriff to supply court rooms when the county legislative body neglects.

If suitable rooms for holding the district court and for chambers of the judge are not provided in the place appointed for holding court in any county, together with attendants, furniture, lights, and stationery sufficient for the transaction of business, the court or the judge may direct the sheriff to provide rooms, attendants, furniture, fuel, lights, and stationery. All expenses incurred, certified by the judge to be correct, are a charge against the county and shall be paid out of the county's general fund.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-210. Change of place of trial because of calamity.

(1) The presiding judge may order court proceedings to be held at another location within the jurisdiction if the presiding judge determines it is necessary because of:

(a) war;

(b) insurrection;

(c) pestilence;

(d) public calamity or natural disaster; or

(e) destruction of or danger to the building in which court is held.

(2) Any order to move court proceedings shall be reduced to writing and filed with the clerk of the court for publication.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-211. Court days.

Courts of justice are open and judicial business may be transacted on any day, except as provided in Section 78A-2-212.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-212. Days on which court closed -- Exceptions.

Judicial business on Sunday, on any day on which general election is held, or on any legal holiday, is limited to the following purposes:

(1) to give, upon their request, instructions to a jury when deliberating on their verdict;

(2) to receive a verdict or discharge a jury;

(3) for the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature; and

(4) judicial business not involving a trial or hearing unless the judge finds it necessary for the fair administration of justice.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-213. Proceedings unaffected by vacancy in office of judge.

No proceeding in any court of justice is affected by a vacancy in the office of all or any of the judges, or by the failure of a term of a judge.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-214. Collection of accounts receivable.

(1) As used in this section:

(a) "Accounts receivable" means any amount due the state from an entity for which payment has not been received by the state agency that is servicing the debt.

(b) "Accounts receivable" includes unpaid fees, licenses, taxes, loans, overpayments, fines, forfeitures, surcharges, costs, contracts, interest, penalties, restitution to victims, third party claims, sale of goods, sale of services, claims, and damages.

(2) If the Department of Corrections does not have responsibility under Subsection 77-18-1(9) for collecting an account receivable and if the Office of State Debt Collection does not have responsibility under Subsection 63A-3-502(6), the district court shall collect the account receivable.

(3) (a) In the juvenile court, money collected by the court from past-due accounts receivable may be used to offset system, administrative, legal, and other costs of

collection.

(b) The juvenile court shall allocate money collected above the cost of collection on a pro rata basis to the various revenue types that generated the accounts receivable.

(4) The interest charge established by the Office of State Debt Collection under Subsection 63A-3-502(4)(g)(iii) may not be assessed on an account receivable subject to the postjudgment interest rate established by Section 15-1-4.

Amended by Chapter 79, 2011 General Session

78A-2-215. Abbreviations and numerals.

Common abbreviations may be used, and numbers may be expressed by customary figures or numerals in court documents.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-216. Fees for writ of garnishment -- Single or continuing.

(1) Any creditor who serves or causes to be served a writ of garnishment upon the garnishee shall pay to the garnishee:

(a) $10 for a single garnishment; and

(b) $25 for a continuing garnishment.

(2) The creditor shall pay the fee directly to the garnishee.

(3) If a plaintiff attempts to garnish the property of a person other than the defendant by serving a garnishment on a garnishee, that person may recover from the plaintiff an amount not to exceed $1,000 if the person demonstrates to the court that the plaintiff failed to exercise reasonable diligence in determining that the person and defendant were the same individual.

(4) The following factors may be taken into consideration by the court in determining whether the plaintiff exercised reasonable diligence in determining whether the person garnished and the defendant were the same individual:

(a) similarities between the person and the actual judgment debtor, including:

(i) the spelling of each person's name;

(ii) addresses;

(iii) physical descriptions;

(iv) identifying information, including Social Security number or driver license number; and

(v) family status;

(b) whether previous contact was made to determine whether the person was the judgment debtor;

(c) how the determination of who the judgment debtor was, was made; and

(d) what information the plaintiff had access to or was provided with regarding the actual judgment debtor from all available sources.

(5) An employer who receives a written request for verification of employment, which includes a copy of the judgment and judgment information statement, shall provide verification within 10 days. The response shall indicate whether or not the defendant identified in the documentation is a current employee.

(6) A plaintiff is not liable for a violation of Subsection (3) regarding a wage

garnishment if the plaintiff transmitted a written request for verification of employment, including a copy of the judgment and judgment information statement, to an employer and the employer did not respond.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 149, 2008 General Session

78A-2-217. Electronic writing.

(1) Except as restricted by the Constitution of the United States or of this state, any writing required or permitted by this code to be filed with or prepared by a court may be filed or prepared in an electronic medium and by electronic transmission subject to the ability of the recipient to accept and process the electronic writing.

(2) Any writing required to be signed that is filed with or prepared by a court in an electronic medium or by electronic transmission shall be signed by electronic signature in accordance with Title 46, Chapter 4, Uniform Electronic Transactions Act.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-218. Powers of every judicial officer -- Contempt.

Every judicial officer has power:

(1) to preserve and enforce order in his immediate presence, and in proceedings before him, when he is engaged in the performance of official duty;

(2) to compel obedience to his lawful orders as provided by law;

(3) to compel the attendance of persons to testify in a proceeding before him in the cases and manner provided by law;

(4) to administer oaths to persons in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and duties; and

(5) punish for contempt as provided by law to enforce compliance with Subsections (1) through (4).

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-219. Powers of judge contradistinguished from court.

A judge may exercise out of court all the powers expressly conferred upon a judge as contradistinguished from the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-220. Authority of magistrate.

(1) Except as otherwise provided by law, a magistrate as defined in Section 77-1-3 shall have the authority to:

(a) commit a person to incarceration prior to trial;

(b) set or deny bail under Section 77-20-1 and release upon the payment of bail and satisfaction of any other conditions of release;

(c) issue to any place in the state summonses and warrants of search and arrest and authorize administrative traffic checkpoints under Section 77-23-104;

(d) conduct an initial appearance in a felony;
(e) conduct arraignments;
(f) conduct a preliminary examination to determine probable cause;
(g) appoint attorneys and order recoupment of attorney fees;
(h) order the preparation of presentence investigations and reports;
(i) issue temporary orders as provided by rule of the Judicial Council; and
(j) perform any other act or function authorized by statute.
(2) A judge of the justice court may exercise the authority of a magistrate specified in Subsection (1) with the following limitations:
(a) a judge of the justice court may conduct an initial appearance, preliminary examination, or arraignment in a felony case as provided by rule of the Judicial Council; and
(b) a judge of the justice court may not set bail in a capital felony nor deny bail in any case.

Amended by Chapter 208, 2011 General Session

78A-2-221. Justices and judges -- Limitations during terms.
A justice or judge of any court of record may not, during his term of office:
(1) practice law or have a partner engaged in the practice of law;
(2) hold office in or make any contribution to any political party or organization engaged in political activity; or
(3) use, in his efforts to obtain or retain judicial office, any political party designation, reference, or description.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-222. Disqualification for interest or relation to parties.
(1) Except by consent of all parties, a justice, judge, or justice court judge may not sit or act in any action or proceeding:
(a) to which he is a party, or in which he is interested;
(b) when he is related to either party by consanguinity or affinity within the third degree, computed according to the rules of the common law; or
(c) when he has been attorney or counsel for either party in the action or proceeding.
(2) The provisions of this section do not apply to the arrangement of the calendar or the regulation of the order of business, nor to the power of transferring the action or proceeding to some other court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-223. Decisions to be rendered within two months -- Procedures for decisions not rendered.
(1) A trial court judge shall decide all matters submitted for final determination within two months of submission, unless circumstances causing the delay are beyond the judge's personal control.

(2) The Judicial Council shall establish reporting procedures for all matters not decided within two months of final submission.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-224. Bases for certain decisions limited.

(1) Except as provided in Subsection (2), no court may rule on the custody, placement, including foster placement, or other disposition alternative for a minor, or the termination of parental rights, based on the fact that a parent or guardian of the minor lawfully does one or more of the following:

(a) legally possesses or uses a firearm or other weapon;

(b) espouses particular religious beliefs; or

(c) schools the minor or other minors outside the public education system or is otherwise sympathetic to schooling a minor outside the public education system.

(2) Subsection (1) does not prohibit a ruling based on the compatibility of a minor with a particular custody, placement, or other disposition alternative as determined by the presence of any of the factors in Subsections (1)(a) through (1)(c).

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-225. Judge of court of record -- Service in other division or court.

A judge of a court of record may serve temporarily as a judge in another geographic division or in another court of record, in accordance with the Utah Constitution and the rules of the Judicial Council.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-226. Repeated application for orders forbidden -- Disobedience -- Contempt.

(1) If an application for an order, made to a judge of a court in which the action or proceeding is pending, is refused in whole or in part or is granted conditionally, a subsequent application for the same order may not be made to any other judge, except of a higher court.

(2) This section does not apply to motions refused for any informality in the papers or proceedings necessary to obtain the order, or to motions refused with liberty to renew them.

(3) A notice of appeal for a trial de novo is not a subsequent application for the same order.

(4) A violation of Subsection (1) may be punished by contempt and any subsequent order may be revoked by the issuing judge or vacated by a judge of the court in which the action or proceeding is pending.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-227 (Repealed 07/01/13). Appointment of attorney guardian ad litem in child abuse and neglect proceedings.

(1) Except as provided in Subsection (2), a court may appoint an attorney guardian ad litem in accordance with Chapter 6, Part 9, Guardian Ad Litem, if:

(a) child abuse, child sexual abuse, or neglect is alleged in any proceeding; or

(b) the court considers it appropriate in any proceedings involving alleged abuse, child sexual abuse, or neglect.

(2) (a) A court may not appoint an attorney guardian ad litem in a criminal case.

(b) Subsection (2)(a) does not prohibit the appointment of an attorney guardian ad litem in a case where a court is determining whether to adjudicate a minor for committing an act that would be a crime if committed by an adult.

(c) Subsection (2)(a) does not prohibit an attorney guardian ad litem from entering an appearance, filing motions, or taking other action in a criminal case on behalf of a minor, if:

(i) the attorney guardian ad litem is appointed to represent the minor in a case that is not a criminal case; and

(ii) the interests of the minor may be impacted by:

(A) an order that has been, or may be, issued in the criminal case; or

(B) other proceedings that have occurred, or may occur, in the criminal case.

(3) If a court appoints an attorney guardian ad litem in a divorce or child custody case, the court shall:

(a) specify in the order appointing the attorney guardian ad litem the specific issues in the proceeding that the attorney guardian ad litem is required to be involved in resolving, which may include issues relating to the custody of children and parent-time schedules;

(b) to the extent possible, bifurcate the issues specified in the order described in Subsection (3)(a) from the other issues in the case, in order to minimize the time constraints placed upon the attorney guardian ad litem in the case; and

(c) except as provided in Subsection (5), within one year after the day on which the attorney guardian ad litem is appointed in the case, issue a final order:

(i) resolving the issues described in the order described in Subsection (3)(a); and

(ii) terminating the appointment of the attorney guardian ad litem in the case.

(4) The court shall issue an order terminating the appointment of an attorney guardian ad litem made under this section, if:

(a) the court determines that the allegations of abuse or neglect are unfounded;

(b) after receiving input from the attorney guardian ad litem, the court determines that the children are no longer at risk of abuse or neglect; or

(c) there has been no activity in the case for which the attorney guardian ad litem is appointed for a period of six consecutive months.

(5) A court may issue a written order extending the one-year period described in Subsection (3)(c) for a time-certain, if the court makes a written finding that there is a compelling reason that the court cannot comply with the requirements described in Subsection (3)(c) within the one-year period.

(6) When appointing an attorney guardian ad litem for a minor under this section, a court may appoint the same attorney guardian ad litem who represents the minor in another proceeding, or who has represented the minor in a previous proceeding, if that attorney guardian ad litem is available.

(7) The court is responsible for all costs resulting from the appointment of an attorney guardian ad litem and shall use funds appropriated by the Legislature for the guardian ad litem program to cover those costs.

(8) (a) If the court appoints the Office of Guardian Ad Litem in a civil case pursuant to this section, the court may assess all or part of those attorney fees, court costs, paralegal, staff, and volunteer expenses against the minor's parent, parents, or legal guardian in an amount that the court determines to be just and appropriate.

(b) The court may not assess those fees or costs against a legal guardian, when that guardian is the state, or against a parent, parents, or legal guardian who is found to be impecunious. If a person claims to be impecunious, the court shall require of that person an affidavit of impecuniosity as provided in Section 78A-2-302 and the court shall follow the procedures and make the determinations as provided in Section 78A-2-302.

(9) An attorney guardian ad litem appointed in accordance with the requirements of this section and Chapter 6, Part 9, Guardian Ad Litem is, when serving in the scope of duties of an attorney guardian ad litem, considered an employee of this state for purposes of indemnification under the Governmental Immunity Act.

Amended by Chapter 120, 2012 General Session
Repealed by Chapter 223, 2012 General Session

78A-2-227.5. Public policy regarding guardian ad litem -- Training.

(1) A guardian ad litem may not presume that a child and the child's parent are adversaries.

(2) A guardian ad litem shall be trained in:

(a) the parental rights and child and family protection principles provided in Section 62A-4a-201;

(b) the fundamental liberties of parents and the public policy of the state to support family unification to the fullest extent possible;

(c) the constitutionally protected rights of parents, in cases where the state is a party; and

(d) the use of a least restrictive means analysis regarding state claims of a compelling child welfare interest.

Enacted by Chapter 223, 2012 General Session

78A-2-228 (Superseded 07/01/13). Private attorney guardian ad litem -- Appointment -- Costs and fees -- Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum qualifications.

(1) (a) The court may appoint a private attorney as guardian ad litem to represent the best interests of the minor in any district court action in which the custody of or visitation with a minor is at issue. The attorney guardian ad litem shall be certified by the Director of the Office of Guardian Ad Litem as having met the minimum qualifications for appointment, but may not be employed by or under contract with the Office of Guardian Ad Litem.

(b) When appointing an attorney guardian ad litem for a minor under this section,

a court may appoint the same attorney guardian ad litem who represents the minor in another proceeding, or who has represented the minor in a previous proceeding, if that attorney guardian ad litem is available.

(c) If, after appointment of the attorney guardian ad litem, an allegation of abuse, neglect, or dependency of the minor is made the court shall:

(i) determine whether it is in the best interests of the minor to continue the appointment; or

(ii) order the withdrawal of the private attorney guardian ad litem and appoint the Office of Guardian Ad Litem.

(2) (a) The court shall assess all or part of the attorney guardian ad litem fees, courts costs, and paralegal, staff, and volunteer expenses against the parties in a proportion the court determines to be just.

(b) If the court finds a party to be impecunious, under the provisions of Section 78A-2-302, the court may direct the impecunious party's share of the assessment to be covered by the attorney guardian ad litem pro bono obligation established in Subsection (6)(b).

(3) The attorney guardian ad litem appointed under the provisions of this section shall:

(a) represent the best interests of the minor from the date of the appointment until released by the court;

(b) conduct or supervise an ongoing, independent investigation in order to obtain, first-hand, a clear understanding of the situation and needs of the minor;

(c) interview witnesses and review relevant records pertaining to the minor and the minor's family, including medical, psychological, and school records;

(d) (i) personally meet with the minor, unless:

(A) the minor is outside of the state; or

(B) meeting with the minor would be detrimental to the minor;

(ii) personally interview the minor, unless:

(A) the minor is not old enough to communicate;

(B) the minor lacks the capacity to participate in a meaningful interview; or

(C) the interview would be detrimental to the minor;

(iii) to the extent possible, determine the minor's goals and concerns regarding custody or visitation; and

(iv) to the extent possible, and unless it would be detrimental to the minor, keep the minor advised of:

(A) the status of the minor's case;

(B) all court and administrative proceedings;

(C) discussions with, and proposals made by, other parties;

(D) court action; and

(E) the psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor;

(e) unless excused by the court, prepare for and attend all mediation hearings and all court conferences and hearings, and present witnesses and exhibits as necessary to protect the best interests of the minor;

(f) identify community resources to protect the best interests of the minor and advocate for those resources; and

(g) participate in all appeals unless excused by the court.

(4) (a) The attorney guardian ad litem shall represent the best interests of a minor. If the minor's wishes differ from the attorney's determination of the minor's best interests, the attorney guardian ad litem shall communicate to the court the minor's wishes and the attorney's determination of the minor's best interests. A difference between the minor's wishes and the attorney's determination of best interests is not sufficient to create a conflict of interest.

(b) The court may appoint one attorney guardian ad litem to represent the best interests of more than one minor child of a marriage.

(5) An attorney guardian ad litem appointed under this section is immune from any civil liability that might result by reason of acts performed within the scope of duties of the attorney guardian ad litem.

(6) (a) Upon the advice of the Director of the Office of Guardian Ad Litem and the Guardian Ad Litem Oversight Committee, the Judicial Council shall by rule establish the minimum qualifications and requirements for appointment by the court as an attorney guardian ad litem.

(b) An attorney guardian ad litem may be required to appear pro bono in one case for every five cases in which the attorney is appointed with compensation.

Amended by Chapter 32, 2009 General Session

78A-2-229. Documents provided to pro se litigants.

(1) Documents classified as private, protected, or sealed by court rule and are provided to a pro se litigant in the course of an action or in accordance with Subsection 63G-2-202(7) may not be distributed, released, or displayed to any other person except the court, the other party and their counsel, or any other person who may be authorized by the court to inspect the documents.

(2) Pro se litigants shall be advised by the court that private, protected, or sealed documents received by the party that the party would not have received but for the litigation and pro se representation are confidential and may not be distributed outside the parties or the court without prior authorization by the court. A court's failure to give this notice may not be used as a defense to prosecution for a violation of the disclosure rule.

(3) Violation of this section is:

(a) punishable by contempt if distribution or release occurs before a final determination is made by the court and the court still has jurisdiction over the parties; or

(b) a class B misdemeanor if the litigation has been concluded and the court no longer has jurisdiction over the parties.

Enacted by Chapter 247, 2010 General Session

78A-2-230. References to court pleadings and other papers.

Any reference in this code to a petition, complaint, or other court record shall be considered to include any cover sheet or accompanying document required by statute or court rule to be filed with the petition, complaint, or other record.

Enacted by Chapter 34, 2010 General Session

78A-2-301. Civil fees of the courts of record -- Courts complex design.

(1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a court of record not governed by another subsection is $360.

(b) The fee for filing a complaint or petition is:

(i) $75 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $185 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than $2,000 and less than $10,000;

(iii) $360 if the claim for damages or amount in interpleader is $10,000 or more;

(iv) $310 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance;

(v) $35 for a motion for temporary separation order filed under Section 30-3-4.5; and

(vi) $125 if the petition is for removal from the Sex Offender and Kidnap Offender Registry under Subsection 77-27-21.5(32).

(c) The fee for filing a small claims affidavit is:

(i) $60 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $100 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than $2,000, but less than $7,500; and

(iii) $185 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is $7,500 or more.

(d) The fee for filing a counter claim, cross claim, complaint in intervention, third party complaint, or other claim for relief against an existing or joined party other than the original complaint or petition is:

(i) $55 if the claim for relief exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $150 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than $2,000 and less than $10,000;

(iii) $155 if the original petition is filed under Subsection (1)(a), the claim for relief is $10,000 or more, or the party seeks relief other than monetary damages; and

(iv) $115 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance.

(e) The fee for filing a small claims counter affidavit is:

(i) $50 if the claim for relief exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $70 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than $2,000, but less than $7,500; and

(iii) $120 if the claim for relief exclusive of court costs, interest, and attorney fees is $7,500 or more.

(f) The fee for depositing funds under Section 57-1-29 when not associated with an action already before the court is determined under Subsection (1)(b) based on the amount deposited.

(g) The fee for filing a petition is:

(i) $225 for trial de novo of an adjudication of the justice court or of the small claims department; and

(ii) $65 for an appeal of a municipal administrative determination in accordance with Section 10-3-703.7.

(h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or petition for writ of certiorari is $225.

(i) The fee for filing a petition for expungement is $135.

(j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges' Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges' Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement Act.

(ii) Four dollars of the fees established by Subsections (1)(a) through (i) shall be allocated by the state treasurer to be deposited in the restricted account, Children's Legal Defense Account, as provided in Section 51-9-408.

(iii) Three dollars of the fees established under Subsections (1)(a) through (e), (1)(g), and (1)(s) shall be allocated to and deposited with the Dispute Resolution Account as provided in Section 78B-6-209.

(iv) Fifteen dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv), (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h), and (1)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court Security Account, as provided in Section 78A-2-602.

(v) Five dollars of the fees established by Subsections (1)(b)(i) and (ii), (1)(d)(ii) and (1)(g)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court Security Account, as provided in Section 78A-2-602.

(k) The fee for filing a judgment, order, or decree of a court of another state or of the United States is $35.

(l) The fee for filing a renewal of judgment in accordance with Section 78B-6-1801 is 50% of the fee for filing an original action seeking the same relief.

(m) The fee for filing probate or child custody documents from another state is $35.

(n) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the Utah State Tax Commission is $30.

(ii) The fee for filing an abstract or transcript of judgment of a court of law of this state or a judgment, order, or decree of an administrative agency, commission, board, council, or hearing officer of this state or of its political subdivisions other than the Utah State Tax Commission, is $50.

(o) The fee for filing a judgment by confession without action under Section 78B-5-205 is $35.

(p) The fee for filing an award of arbitration for confirmation, modification, or vacation under Title 78B, Chapter 11, Utah Uniform Arbitration Act, that is not part of an action before the court is $35.

(q) The fee for filing a petition or counter-petition to modify a decree of divorce is $100.

(r) The fee for filing any accounting required by law is:

(i) $15 for an estate valued at $50,000 or less;

(ii) $30 for an estate valued at $75,000 or less but more than $50,000;

(iii) $50 for an estate valued at $112,000 or less but more than $75,000;

(iv) $90 for an estate valued at $168,000 or less but more than $112,000; and

(v) $175 for an estate valued at more than $168,000.

(s) The fee for filing a demand for a civil jury is $250.

(t) The fee for filing a notice of deposition in this state concerning an action pending in another state under Utah Rule of Civil Procedure 26 is $35.

(u) The fee for filing documents that require judicial approval but are not part of an action before the court is $35.

(v) The fee for a petition to open a sealed record is $35.

(w) The fee for a writ of replevin, attachment, execution, or garnishment is $50 in addition to any fee for a complaint or petition.

(x) (i) The fee for a petition for authorization for a minor to marry required by Section 30-1-9 is $5.

(ii) The fee for a petition for emancipation of a minor provided in Title 78A, Chapter 6, Part 8, Emancipation, is $50.

(y) The fee for a certificate issued under Section 26-2-25 is $8.

(z) The fee for a certified copy of a document is $4 per document plus 50 cents per page.

(aa) The fee for an exemplified copy of a document is $6 per document plus 50 cents per page.

(bb) The Judicial Council shall by rule establish a schedule of fees for copies of documents and forms and for the search and retrieval of records under Title 63G, Chapter 2, Government Records Access and Management Act. Fees under this Subsection (1)(bb) shall be credited to the court as a reimbursement of expenditures.

(cc) There is no fee for services or the filing of documents not listed in this section or otherwise provided by law.

(dd) Except as provided in this section, all fees collected under this section are paid to the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk accepts the pleading for filing or performs the requested service.

(ee) The filing fees under this section may not be charged to the state, its agencies, or political subdivisions filing or defending any action. In judgments awarded in favor of the state, its agencies, or political subdivisions, except the Office of Recovery Services, the court shall order the filing fees and collection costs to be paid by the judgment debtor. The sums collected under this Subsection (1)(ee) shall be applied to the fees after credit to the judgment, order, fine, tax, lien, or other penalty and costs permitted by law.

(2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts shall transfer all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of Facilities Construction and Management Capital Projects Fund.

(ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities Construction and Management shall use up to $3,750,000 of the revenue deposited in the Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to initiate the development of a courts complex in Salt Lake City.

(B) If the Legislature approves funding for construction of a courts complex in

Salt Lake City in the 1995 Annual General Session, the Division of Facilities Construction and Management shall use the revenue deposited in the Capital Projects Fund under this Subsection (2)(a)(ii) to construct a courts complex in Salt Lake City.

(C) After the courts complex is completed and all bills connected with its construction have been paid, the Division of Facilities Construction and Management shall use any money remaining in the Capital Projects Fund under this Subsection (2)(a)(ii) to fund the Vernal District Court building.

(iii) The Division of Facilities Construction and Management may enter into agreements and make expenditures related to this project before the receipt of revenues provided for under this Subsection (2)(a)(iii).

(iv) The Division of Facilities Construction and Management shall:

(A) make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund; and

(B) reimburse the Capital Projects Fund upon receipt of the revenues provided for under this Subsection (2).

(b) After June 30, 1998, the administrator of the courts shall ensure that all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted account.

(c) The Division of Finance shall deposit all revenues received from the court administrator into the restricted account created by this section.

(d) (i) From May 1, 1995 until June 30, 1998, the administrator of the courts shall transfer $7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Facilities Construction and Management Capital Projects Fund. The division of money pursuant to Section 78A-5-110 shall be calculated on the balance of the fine or bail forfeiture paid.

(ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer $7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Finance for deposit in the restricted account created by this section. The division of money pursuant to Section 78A-5-110 shall be calculated on the balance of the fine or bail forfeiture paid.

(3) (a) There is created within the General Fund a restricted account known as the State Courts Complex Account.

(b) The Legislature may appropriate money from the restricted account to the administrator of the courts for the following purposes only:

(i) to repay costs associated with the construction of the court complex that were funded from sources other than revenues provided for under this Subsection (3)(b)(i); and

(ii) to cover operations and maintenance costs on the court complex.

Amended by Chapter 247, 2012 General Session

78A-2-301.5. Civil fees for justice courts.

(1) The fee for filing a small claims affidavit is:

(a) $60 if the claim for damages or amount in interpleader exclusive of justice court costs, interest, and attorney fees is $2,000 or less;

(b) $100 if the claim for damages or amount in interpleader exclusive of justice court costs, interest, and attorney fees is greater than $2,000, but less than $7,500; and

(c) $185 if the claim for damages or amount in interpleader exclusive of justice court costs, interest, and attorney fees is $7,500 or more.

(2) The fee for filing a small claims counter affidavit is:

(a) $50 if the claim for relief exclusive of justice court costs, interest, and attorney fees is $2,000 or less;

(b) $70 if the claim for relief exclusive of justice court costs, interest, and attorney fees is greater than $2,000, but less than $7,500; and

(c) $120 if the claim for relief exclusive of justice court costs, interest, and attorney fees is $7,500 or more.

(3) The fee for filing a petition for expungement is $135.

(4) The fee for a petition to open a sealed record is $35.

(5) The fee for a writ of replevin, attachment, execution, or garnishment is $50 in addition to any fee for a complaint or petition.

(6) The fee for filing a notice of appeal to a court of record is $10. This fee covers all services of the justice court on appeal but does not satisfy the trial de novo filing fee in the court of record.

(7) The fee for a certified copy of a document is $4 per document plus 50 cents per page.

(8) The fee for an exemplified copy of a document is $6 per document plus 50 cents per page.

(9) The fee schedule adopted by the Judicial Council for copies of documents and forms and for the search and retrieval of records under Title 63G, Chapter 2, Government Records Access and Management Act, shall apply.

(10) There is no fee for services or the filing of documents not listed in this section or otherwise provided by law.

(11) The filing fees under this section may not be charged to the state, its agencies, or political subdivisions filing or defending any action.

Enacted by Chapter 205, 2012 General Session

78A-2-302. Impecunious litigants -- Affidavit.

(1) For purposes of Sections 78A-2-302 through 78A-2-309:

(a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental illness, no contest, and conviction of any crime or offense.

(b) "Prisoner" means a person who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.

(2) As provided in this chapter, any person may institute, prosecute, defend, and appeal any cause in any court in this state without prepayment of fees and costs or security, by taking and subscribing, before any officer authorized to administer an oath, an affidavit of impecuniosity demonstrating financial inability to pay fees and costs or give security.

(3) The affidavit shall contain complete information on the party's:

(a) identity and residence;

(b) amount of income, including government financial support, alimony, child support;

(c) assets owned, including real and personal property;

(d) business interests;

(e) accounts receivable;

(f) securities, checking and savings account balances;

(g) debts; and

(h) monthly expenses.

(4) If the party is a prisoner, he shall also disclose the amount of money held in his prisoner trust account at the time the affidavit is executed as provided in Section 78A-2-305.

(5) In addition to the financial disclosures, the affidavit shall state the following:

I, A B, do solemnly swear or affirm that due to my poverty I am unable to bear the expenses of the action or legal proceedings which I am about to commence or the appeal which I am about to take, and that I believe I am entitled to the relief sought by the action, legal proceedings, or appeal.

Amended by Chapter 366, 2011 General Session

78A-2-303. False affidavit -- Penalty.

(1) A person may assert by affidavit that an affidavit of impecuniosity, action, or appeal is:

(a) false;

(b) frivolous or without merit; or

(c) malicious.

(2) Upon receipt of an affidavit in accordance with Subsection (1), the court may notify the affiant of the challenge and set a date, not less than five days from receipt of the notice, requiring the affiant to appear and show cause why the affiant should not be required to:

(a) post a bond for the costs of the action or appeal; or

(b) pay the legal fees for the action or appeal.

(3) The court may dismiss the action or appeal if:

(a) the affiant does not appear;

(b) the affiant appears and the court determines the affidavit is false, frivolous, without merit, or malicious; or

(c) the court orders the affiant to post a bond or pay the legal fees and the affiant fails to do so.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-304. Effect of filing affidavit -- Nonprisoner.

(1) Upon the filing of the oath or affirmation with any Utah court by a nonprisoner, the court shall review the affidavit and make an independent determination based on the information provided whether court costs and fees should be waived entirely or in part. Notwithstanding the party's statement of inability to pay court costs, the court shall require a partial or full filing fee where the financial information provided

demonstrates an ability to pay a fee.

(2) In instances where fees or costs are completely waived, the court shall immediately file any complaint or papers on appeal and do what is necessary or proper as promptly as if the litigant had fully paid all the regular fees. The constable or sheriff shall immediately serve any summonses, writs, process and subpoenas, and papers necessary or proper in the prosecution or defense of the cause, for the impecunious person as if all the necessary fees and costs had been fully paid.

(3) However, in cases where an impecunious affidavit is filed, the judge shall question the person who filed the affidavit at the time of hearing the cause as to his ability to pay. If the judge opines that the person is reasonably able to pay the costs, the judge shall direct the judgment or decree not be entered in favor of that person until the costs are paid. The order may be cancelled later upon petition if the facts warrant cancellation.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-305. Effect of filing affidavit -- Procedure for review and collection.

(1) (a) Upon receipt of the oath or affirmation filed with any Utah court by a prisoner, the court shall immediately request the institution or facility where the prisoner is incarcerated to provide an account statement detailing all financial activities in the prisoner's trust account for the previous six months or since the time of incarceration, whichever is shorter.

(b) The incarcerating facility shall:

(i) prepare and produce to the court the prisoner's six-month trust account statement, current trust account balance, and aggregate disposable income; and

(ii) calculate aggregate disposable income by totaling all deposits made in the prisoner's trust account during the six-month period and subtracting all funds automatically deducted or otherwise garnished from the account during the same period.

(2) The court shall:

(a) review both the affidavit of impecuniosity and the financial account statement; and

(b) based upon the review, independently determine whether or not the prisoner is financially capable of paying all the regular fees and costs associated with filing the action.

(3) When the court concludes that the prisoner is unable to pay full fees and costs, the court shall assess an initial partial filing fee equal to 50% of the prisoner's current trust account balance or 10% of the prisoner's six-month aggregate disposable income, whichever is greater.

(4) (a) After payment of the initial partial filing fee, the court shall require the prisoner to make monthly payments of 20% of the preceding month's aggregate disposable income until the regular filing fee associated with the civil action is paid in full.

(b) The agency having custody of the prisoner shall:

(i) garnish the prisoner's account each month; and

(ii) once the collected fees exceed $10, forward payments to the clerk of the

court until the filing fees are paid.

(c) Nothing in this section may be construed to prevent the agency having custody of the prisoner from withdrawing funds from the prisoner's account to pay court-ordered restitution.

(5) Collection of the filing fees continues despite dismissal of the action.

(6) The filing fee collected may not exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action.

(7) If the prisoner is filing an initial divorce action or an action to obtain custody of the prisoner's children, the following procedures shall apply for review and collection of fees and costs:

(a) Upon filing an oath or affirmation with any Utah court by a prisoner, the court shall review the affidavit and make an independent determination based on the information provided whether court costs and fees should be paid in full or be waived in whole or in part. The court shall require a full or partial filing fee when the prisoner's financial information demonstrates an ability to pay the applicable court fees or costs.

(b) (i) If a prisoner's court fees or costs are completely waived, and if the prisoner files an appeal, the court shall immediately file any complaint or papers on appeal and complete all necessary action as promptly as if the litigant had paid all the fees and costs in full.

(ii) If a prisoner is impecunious, the constable and sheriff shall immediately serve any summonses, writs, process and subpoenas, and papers necessary in the prosecution or defense of the cause as if all the necessary fees and costs had been paid in full.

(c) (i) If a prisoner files an affidavit of impecuniosity, the judge shall question the prisoner at the time of the hearing on the merits of the case as to the prisoner's ability to pay.

(ii) If the judge determines that the prisoner is reasonably able to pay court fees and costs, the final order or decree shall be entered, however the prisoner may not seek enforcement or modification of the decree or order until the prisoner has paid the fees or costs in full.

(iii) A judge may waive the restrictions placed on the prisoner in Subsection (7)(c)(ii) upon a showing of good cause.

Amended by Chapter 226, 2010 General Session

78A-2-306. Notice of filing fee -- Consequence of nonpayment.

(1) When an affidavit of impecuniosity has been filed and the court assesses an initial filing fee, the court shall immediately notify the litigant in writing of:

(a) the initial filing fee required as a prerequisite to proceeding with the action;

(b) the procedure available to challenge the initial filing fee assessment as provided in Section 78A-2-307; and

(c) the inmate's ongoing obligation to make monthly payments until the entire filing fee is paid.

(2) The court may not authorize service of process or otherwise proceed with the action, except as provided in Section 78A-2-307, until the initial filing fee has been completely paid to the clerk of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-307. Filing fee challenge -- Court powers.

(1) Within 10 days of receiving court notice requiring an initial filing fee under Section 78A-2-306, the litigant may contest the fee assessment by filing a memorandum and supporting documentation with the court demonstrating inability to pay the fee.

(2) The court shall review the memorandum and supporting documents challenging the fee assessment for facial validity.

(3) The court may reduce the initial filing fee, authorize service of process, or otherwise proceed with the action without prepayment of costs and fees if the memorandum shows the litigant:

(a) has lost his source of income;

(b) has unaccounted nondiscretionary expenses limiting his ability to pay;

(c) will suffer immediate irreparable harm if the action is unnecessarily delayed; or

(d) will otherwise lose the cause of action by unnecessary delays associated with securing funds necessary to satisfy the assessed filing fee.

(4) Nothing in this section shall be construed to relieve the litigant from the ongoing obligation of monthly payments until the filing fee is paid in full.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-308. Failure to serve papers -- Penalty.

Any justice court judge, clerk, or officer refusing to file or serve the papers is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-309. Liability for fees if successful in litigation.

Nothing in this part shall prevent a justice court judge, clerk, constable, or sheriff from collecting his or her regular fees for all services rendered for the impecunious person, in the event the person is successful in litigation. All fees and costs shall be regularly taxed and included in any judgment recovered by the person. The fees and costs shall be paid to a justice court judge, clerk, constable, or sheriff. If the person fails in the action or appeal, then the costs of the action or appeal shall be adjudged against the person.

Amended by Chapter 146, 2009 General Session

78A-2-401. Title.

This part is known as the "Court Reporter Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-402. Definitions.

As used in this part:

(1) "Certified court reporter" has the same meaning as in Title 58, Chapter 74, Certified Court Reporters Licensing Act.

(2) "Folio" means 100 words. A number expressed as a numeral counts as one word; however, any portion of the last folio is not counted.

(3) "Official court transcriber" means a person certified in accordance with rules of the Judicial Council as competent to transcribe into written form an audio or video recording of court proceedings.

Amended by Chapter 34, 2010 General Session

78A-2-403. Appointment of reporters -- Eligibility -- Oath -- Bond -- Action on bond.

(1) A person may not be appointed to the position of court reporter nor act in the capacity of a court reporter in any court of record of this state, or before any referee, master, board, or commission of this state without a currently valid license from the Division of Occupational and Professional Licensing as provided in Title 58, Chapter 74, Certified Court Reporters Licensing Act.

(2) Before any person may act as a court reporter, the person shall:

(a) take, subscribe, and file the constitutional oath; and

(b) give a bond with sufficient surety, conditioned upon the faithful performance of all duties, in the sum of $2,500, or larger sum if ordered by the judge.

(3) The bond shall run to the state of Utah, but an action on it may be maintained by any person whose rights are affected by the failure of the reporter to perform the reporter's official duties.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-404. Contract restrictions.

(1) Any contract for court reporting services, not related to a particular case or reporting incident, is prohibited between a court reporter or any other person with whom a court reporter has a principal and agency relationship and any attorney, party to an action, or party having a financial interest in an action. Negotiating or bidding reasonable fees, equal to all the parties, on a case-by-case basis may not be prohibited.

(2) A certified court reporter is an officer of the court whose impartiality shall remain beyond question.

(3) This section does not apply to the courts or the administrative tribunals of this state.

(4) Violation of this section shall be considered unprofessional conduct as provided in Sections 58-74-102 and 58-74-502, and shall be grounds for revocation of licensure only.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-405. Record of court proceedings.

The Judicial Council shall by rule provide for the means of maintaining the record

of proceedings in the courts of record by official court reporters or by electronic recording devices.

Amended by Chapter 34, 2010 General Session

78A-2-408. Transcripts and copies -- Fees.

(1) The Judicial Council shall by rule provide for a standard page format for transcripts of court hearings.

(2) (a) The fee for a transcript of a court session, or any part of a court session, shall be $3.50 per page, which includes the initial preparation of the transcript and one certified copy. The preparer shall deposit the original text file and printed transcript with the clerk of the court and provide the person requesting the transcript with the certified copy. The cost of additional copies shall be as provided in Subsection 78A-2-301(1). The transcript for an appeal shall be prepared within the time period permitted by the rules of Appellate Procedure. The fee for a transcript prepared within three business days of the request shall be 1-1/2 times the base rate. The fee for a transcript prepared within one business day of the request shall be double the base rate.

(b) When a transcript is ordered by the court, the fees shall be paid by the parties to the action in equal proportion or as ordered by the court. The fee for a transcript in a criminal case in which the defendant is found to be impecunious shall be paid pursuant to Section 77-32-305.

(c) There is established within the General Fund a restricted account known as the Court Reporting Technology Account. The clerk of the court shall transfer to the state treasurer for deposit into this account all fees received under this section. The state court administrator may draw upon this account for the purchase, development, and maintenance of court reporting technologies, information technology, and other expenses necessary for maintaining a verbatim record of court sessions.

(3) The fee for the preparation of a transcript of a court hearing by an official court transcriber and the fee for the preparation of the transcript by a certified court reporter of a hearing before any court, referee, master, board, or commission of this state shall be as provided in Subsection (2)(a), and shall be payable to the person preparing the transcript.

Amended by Chapter 143, 2011 General Session

78A-2-409. Certified transcripts prima facie correct.

A transcript of a certified court reporter's notes, written in longhand or typewritten, certified by the court reporter as being a correct transcript of evidence and proceedings, is prima facie a correct statement of the evidence and proceedings.

Amended by Chapter 34, 2010 General Session

78A-2-410. Transcripts taxed as costs.

A transcript may not be taxed as costs, unless the preparation of the transcript is ordered either by a party or by the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-411. Crimes.

Any violation of the provisions of this chapter, except Section 78A-2-404, is a misdemeanor.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-501. Online court assistance program -- Purpose of program -- User's fee.

(1) There is established an online court assistance program administered by the Administrative Office of the Courts to provide the public with information about civil procedures and to assist the public in preparing and filing civil pleadings and other papers in:

(a) uncontested divorces;

(b) enforcement of orders in the divorce decree;

(c) landlord and tenant actions; and

(d) other types of proceedings approved by the Online Court Assistance Program Policy Board.

(2) The purpose of the online court assistance program shall be to:

(a) minimize the costs of civil litigation;

(b) improve access to the courts; and

(c) provide for informed use of the courts and the law by pro se litigants.

(3) (a) An additional $20 shall be added to the filing fee established by Section 78A-2-301 if a person files a complaint, petition, answer, or response prepared through the program. There shall be no fee for using the program or for papers filed subsequent to the initial pleading.

(b) There is created within the General Fund a restricted account known as the Online Court Assistance Account. The fee collected under this Subsection (3) shall be deposited in the restricted account and appropriated by the Legislature to the Administrative Office of the Courts to develop, operate, and maintain the program and to support the use of the program through education of the public.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-502. Creation of policy board -- Membership -- Terms -- Chair -- Quorum -- Expenses.

(1) There is created a 13 member policy board to be known as the "Online Court Assistance Program Policy Board" which shall:

(a) identify the subject matter included in the Online Court Assistance Program;

(b) develop information and forms in conformity with the rules of procedure and evidence; and

(c) advise the Administrative Office of the Courts regarding the administration of the program.

(2) The voting membership shall consist of:

(a) two members of the House of Representatives designated by the speaker,

with one member from each party;

(b) two members of the Senate designated by the president, with one member from each party;

(c) two attorneys actively practicing in domestic relations designated by the Family Law Section of the Utah State Bar;

(d) one attorney actively practicing in civil litigation designated by the Civil Litigation Section of the Utah State Bar;

(e) one court commissioner designated by the chief justice of the Utah Supreme Court;

(f) one district court judge designated by the chief justice of the Utah Supreme Court;

(g) one attorney from Utah Legal Services designated by its director;

(h) one attorney from Legal Aid designated by its director; and

(i) two persons from the Administrative Office of the Courts designated by the state court administrator.

(3) (a) The terms of the members shall be four years and staggered so that approximately half of the board expires every two years.

(b) The board shall meet as needed.

(4) The board shall select one of its members to serve as chair.

(5) A majority of the members of the board constitutes a quorum.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session

78A-2-601. Security surcharge -- Application and exemptions -- Deposit in restricted account.

(1) In addition to any fine, penalty, forfeiture, or other surcharge, a security surcharge of $33 shall be assessed in all courts of record on all criminal convictions and juvenile delinquency judgments.

(2) The security surcharge may not be imposed upon:

(a) nonmoving traffic violations;

(b) community service; and

(c) penalties assessed by the juvenile court as part of the nonjudicial adjustment of a case under Section 78A-6-602.

(3) The security surcharge shall be collected after the surcharge under Section 51-9-401, but before any fine, and deposited with the state treasurer. A fine that would otherwise have been charged may not be reduced due to the imposition of the security surcharge.

(4) The state treasurer shall deposit the collected security surcharge in the restricted account, Court Security Account, as provided in Section 78A-2-602.

Amended by Chapter 200, 2009 General Session

78A-2-602. Court Security Account established -- Funding -- Uses.

(1) There is created a restricted account in the General Fund known as the Court Security Account.

(2) The state treasurer shall deposit in the Court Security Account:

(a) collected money from the surcharge established in Section 78A-2-601;

(b) money from the portion of filing fees established in Subsections 78A-2-301(1)(j)(iv) and (v); and

(c) amounts designated by Subsection 78A-7-122(4)(b)(ii).

(3) The Administrative Office of the Courts shall use the allocation to contract for court security at all district and juvenile courts throughout the state.

Amended by Chapter 200, 2009 General Session

78A-3-101. Number of justices -- Terms -- Chief justice and associate chief justice -- Selection and functions.

(1) The Supreme Court consists of five justices.

(2) A justice of the Supreme Court shall be appointed initially to serve until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office of a justice of the Supreme Court is 10 years and commences on the first Monday in January following the date of election. A justice whose term expires may serve upon request of the Judicial Council until a successor is appointed and qualified.

(3) The justices of the Supreme Court shall elect a chief justice from among the members of the court by a majority vote of all justices. The term of the office of chief justice is four years. The chief justice may serve successive terms. The chief justice may resign from the office of chief justice without resigning from the Supreme Court. The chief justice may be removed from the office of chief justice by a majority vote of all justices of the Supreme Court.

(4) If the justices are unable to elect a chief justice within 30 days of a vacancy in that office, the associate chief justice shall act as chief justice until a chief justice is elected under this section. If the associate chief justice is unable or unwilling to act as chief justice, the most senior justice shall act as chief justice until a chief justice is elected under this section.

(5) In addition to the chief justice's duties as a member of the Supreme Court, the chief justice has duties as provided by law.

(6) There is created the office of associate chief justice. The term of office of the associate chief justice is two years. The associate chief justice may serve in that office no more than two successive terms. The associate chief justice shall be elected by a majority vote of the members of the Supreme Court and shall be allocated duties as the chief justice determines. If the chief justice is absent or otherwise unable to serve, the associate chief justice shall serve as chief justice. The chief justice may delegate responsibilities to the associate chief justice as consistent with law.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-3-102. Supreme Court jurisdiction.

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) a judgment of the Court of Appeals;

(b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;

(c) discipline of lawyers;

(d) final orders of the Judicial Conduct Commission;

(e) final orders and decrees in formal adjudicative proceedings originating with:

(i) the Public Service Commission;

(ii) the State Tax Commission;

(iii) the School and Institutional Trust Lands Board of Trustees;

(iv) the Board of Oil, Gas, and Mining;

(v) the state engineer; or

(vi) the executive director of the Department of Natural Resources reviewing actions of the Division of Forestry, Fire, and State Lands;

(f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (3)(e);

(g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;

(h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;

(i) appeals from the district court involving a conviction or charge of a first degree felony or capital felony;

(j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction; and

(k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:

(a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;

(b) election and voting contests;

(c) reapportionment of election districts;

(d) retention or removal of public officers;

(e) matters involving legislative subpoenas; and

(f) those matters described in Subsections (3)(a) through (d).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection

(3)(b).

(6) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.

Amended by Chapter 344, 2009 General Session

78A-3-103. Supreme Court -- Rulemaking, judges pro tempore, and practice of law.

(1) The Supreme Court shall adopt rules of procedure and evidence for use in the courts of the state and shall by rule manage the appellate process. The Legislature may amend the rules of procedure and evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature.

(2) Except as otherwise provided by the Utah Constitution, the Supreme Court by rule may authorize retired justices and judges and judges pro tempore to perform any judicial duties. Judges pro tempore shall be citizens of the United States, Utah residents, and admitted to practice law in Utah.

(3) The Supreme Court shall by rule govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to the practice of law.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-3-104. Appellate court administrator.

The appellate court administrator shall appoint clerks and support staff as necessary for the operation of the Supreme Court and the Court of Appeals. The duties of the clerks and support staff shall be established by the appellate court administrator, and powers established by rule of the Supreme Court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-3-105. Service of sheriff to court.

The court may at any time require the attendance and services of any sheriff in the state.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-4-101. Creation -- Seal.

There is created a court known as the Court of Appeals. The Court of Appeals is a court of record and shall have a seal.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-4-102. Number of judges -- Terms -- Functions -- Filing fees.

(1) The Court of Appeals consists of seven judges. The term of appointment to office as a judge of the Court of Appeals is until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office of

a judge of the Court of Appeals is six years and commences on the first Monday in January, next following the date of election. A judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified. The presiding judge of the Court of Appeals shall receive as additional compensation $1,000 per annum or fraction thereof for the period served.

(2) The Court of Appeals shall sit and render judgment in panels of three judges. Assignment to panels shall be by random rotation of all judges of the Court of Appeals. The Court of Appeals by rule shall provide for the selection of a chair for each panel. The Court of Appeals may not sit en banc.

(3) The judges of the Court of Appeals shall elect a presiding judge from among the members of the court by majority vote of all judges. The term of office of the presiding judge is two years and until a successor is elected. A presiding judge of the Court of Appeals may serve in that office no more than two successive terms. The Court of Appeals may by rule provide for an acting presiding judge to serve in the absence or incapacity of the presiding judge.

(4) The presiding judge may be removed from the office of presiding judge by majority vote of all judges of the Court of Appeals. In addition to the duties of a judge of the Court of Appeals, the presiding judge shall:

(a) administer the rotation and scheduling of panels;

(b) act as liaison with the Supreme Court;

(c) call and preside over the meetings of the Court of Appeals; and

(d) carry out duties prescribed by the Supreme Court and the Judicial Council.

(5) Filing fees for the Court of Appeals are the same as for the Supreme Court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-4-103. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

(a) to carry into effect its judgments, orders, and decrees; or

(b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) (i) a final order or decree resulting from:

(A) a formal adjudicative proceeding of a state agency; or

(B) a permit review adjudicative proceeding, as defined in Section 19-1-301.5; or

(ii) an appeal from the district court review of an informal adjudicative proceeding of an agency other than the following:

(A) the Public Service Commission;

(B) the State Tax Commission;

(C) the School and Institutional Trust Lands Board of Trustees;

(D) the Division of Forestry, Fire, and State Lands, for an action reviewed by the executive director of the Department of Natural Resources;

(E) the Board of Oil, Gas, and Mining; or

(F) the state engineer;

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section 63G-3-602;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.

Amended by Chapter 333, 2012 General Session

78A-4-104. Location of Court of Appeals.

The Court of Appeals has its principal location in Salt Lake City. The Court of Appeals may perform any of its functions in any location within the state.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-4-105. Review of actions by Supreme Court.

Review of the judgments, orders, and decrees of the Court of Appeals shall be by petition for writ of certiorari to the Supreme Court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-4-106. Appellate Mediation Office -- Protected records and information -- Governmental immunity.

(1) Unless a more restrictive rule of court is adopted pursuant to Subsection 63G-2-201(3)(b), information and records relating to any matter on appeal received or

generated by the Chief Appellate Mediator or other staff of the Appellate Mediation Office as a result of any party's participation or lack of participation in the settlement program shall be maintained as protected records pursuant to Subsections 63G-2-305(16), (17), and (32).

(2) In addition to the access restrictions on protected records provided in Section 63G-2-202, the information and records may not be disclosed to judges, staff, or employees of any court of this state.

(3) The Chief Appellate Mediator may disclose statistical and other demographic information as may be necessary and useful to report on the status and to allow supervision and oversight of the Appellate Mediation Office.

(4) When acting as mediators, the Chief Appellate Mediator and other professional staff of the Appellate Mediation Office shall be immune from liability pursuant to Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(5) Pursuant to Utah Constitution, Article VIII, Section 4, the Supreme Court may exercise overall supervision of the Appellate Mediation Office as part of the appellate process.

Amended by Chapter 377, 2012 General Session

78A-4-201. Appellate review of juvenile courts.

To uphold the clear and compelling fundamental liberty interests and constitutionally protected rights of parents and the strong public policy in favor of maximizing family unification, appropriate appellate review shall be made available and applied in furtherance of those interests.

Enacted by Chapter 281, 2012 General Session

78A-5-101. State District Court Administrative System.

(1) The district court is a trial court of general jurisdiction.

(2) There is established a State District Court Administrative System. The Judicial Council shall administer the operation of the system.

(3) In this chapter, "court system" means the State District Court Administrative System.

(4) A district court shall be located in the county seat of each county.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-5-102. Jurisdiction -- Appeals.

(1) The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

(2) The district court judges may issue all extraordinary writs and other writs necessary to carry into effect their orders, judgments, and decrees.

(3) The district court has jurisdiction over matters of lawyer discipline consistent with the rules of the Supreme Court.

(4) The district court has jurisdiction over all matters properly filed in the circuit court prior to July 1, 1996.

(5) The district court has appellate jurisdiction over judgments and orders of the justice court as outlined in Section 78A-7-118 and small claims appeals filed pursuant to Section 78A-8-106.

(6) Appeals from the final orders, judgments, and decrees of the district court are under Sections 78A-3-102 and 78A-4-103.

(7) The district court has jurisdiction to review:

(a) agency adjudicative proceedings as set forth in Title 63G, Chapter 4, Administrative Procedures Act, and shall comply with the requirements of that chapter, in its review of agency adjudicative proceedings; and

(b) municipal administrative proceedings in accordance with Section 10-3-703.7.

(8) Notwithstanding Subsection (1), the district court has subject matter jurisdiction in class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances only if:

(a) there is no justice court with territorial jurisdiction;

(b) the offense occurred within the boundaries of the municipality in which the district courthouse is located and that municipality has not formed, or has not formed and then dissolved, a justice court; or

(c) they are included in an indictment or information covering a single criminal episode alleging the commission of a felony or a class A misdemeanor.

(9) If the district court has subject matter jurisdiction pursuant to Subsection (5) or (8), it also has jurisdiction over offenses listed in Section 78A-7-106 even if those offenses are committed by a person 16 years of age or older.

(10) The district court has jurisdiction of actions under Title 78B, Chapter 7, Part 2, Child Protective Orders, if the juvenile court transfers the case to the district court.

Amended by Chapter 34, 2010 General Session

78A-5-103. District court case management.

(1) The district court of each district shall develop systems of case management.

(2) The case management systems developed by a district court shall:

(a) ensure judicial accountability for the just and timely disposition of cases; and

(b) provide for each judge a full judicial work load that accommodates differences in the subject matter or complexity of cases assigned to different judges.

(3) A district court may establish divisions within the court for the efficient management of different types of cases. The existence of divisions within the court may not:

(a) affect the jurisdiction of the court nor the validity of court orders; or

(b) impede public access to the courts.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-5-104. Terms -- Minimum of once quarterly.

Each district court shall hold court at the county seat of each county within the district at least once in each quarter of the year.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-5-105. Term of judges -- Vacancy.

(1) Judges of the district courts shall be appointed initially until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office for judges of the district courts is six years, and commences on the first Monday in January, next following the date of election.

(2) A judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-5-106. Presiding judge -- Associate presiding judge -- Election -- Term -- Compensation -- Powers -- Duties.

(1) In judicial districts having more than one judge, the district court judges shall elect one judge of the district to the office of presiding judge.

(2) In judicial districts having more than two judges, the district court judges may elect one judge of the district to the office of associate presiding judge.

(3) In districts having five or more full-time judges, court commissioners, referees, or hearing officers, the presiding judge shall receive an additional $2,000 per annum as compensation.

(4) In districts having 10 or more full-time judges, court commissioners, referees, or hearing officers, the associate presiding judge shall receive an additional $2,000 per annum as compensation.

(5) The presiding judge has the following authority and responsibilities, consistent with the policies of the Judicial Council:

(a) implementing policies of the Judicial Council; and

(b) exercising powers and performing administrative duties as authorized by the Judicial Council.

(6) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge. The associate presiding judge shall perform other duties assigned by the presiding judge.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-5-107. Court commissioners -- Qualifications -- Appointment -- Functions governed by rule.

(1) (a) Court commissioners are quasi-judicial officers of courts of record and have limited judicial authority as provided by this section and rules of the Judicial Council.

(b) Court commissioners serve full-time and are subject to the restrictions of Section 78A-2-221, which prohibits the practice of law.

(2) (a) The Judicial Council shall appoint court commissioners with the concurrence of a majority of the judges of trial courts in the district the court commissioner primarily serves.

(b) The Judicial Council may assign court commissioners appointed under this section to serve in one or more judicial districts.

(3) A person appointed as a court commissioner shall have the following

qualifications:

(a) be 25 years of age or older;

(b) be a citizen of the United States;

(c) be a resident of this state while serving as court commissioner;

(d) be admitted to the practice of law in this state; and

(e) possess ability and experience in the areas of law in which the commissioner will be serving.

(4) A court commissioner shall take and subscribe to the oath of office as required by Article IV, Sec. 10, Utah Constitution, prior to assuming the duties of the office.

(5) Court commissioners shall:

(a) comply with applicable constitutional and statutory provisions, court rules and procedures, and rules of the Judicial Council;

(b) comply with the Code of Judicial Conduct to the same extent as full-time judges; and

(c) successfully complete orientation and education programs as required by the Judicial Council.

(6) The presiding judge of the district the commissioner primarily serves:

(a) shall develop a performance plan for the court commissioner and annually conduct an evaluation of the commissioner's performance, and shall provide the plan and evaluations to the Judicial Council upon request; and

(b) is responsible for the day-to-day supervision of the court commissioner.

(7) The Judicial Council shall:

(a) establish by rule procedures for the investigation and review of complaints and the discipline and removal of court commissioners; and

(b) evaluate court commissioners under the requirements of Subsection 78A-2-104(5).

(8) The Judicial Council shall make uniform statewide rules defining the duties and authority of court commissioners for each level of court they serve. The rules shall not exceed constitutional limitations upon the delegation of judicial authority. The rules shall at a minimum establish:

(a) types of cases and matters commissioners may hear;

(b) types of orders commissioners may recommend;

(c) types of relief commissioners may recommend; and

(d) procedure for timely judicial review of recommendations and orders made by court commissioners.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-5-108. Duties of the clerk of the district court.

The clerk of the district court shall:

(1) take charge of and safely keep the court seal;

(2) take charge of and safely keep or dispose of all books, papers, and records filed or deposited with the clerk, and all other records required by law or the rules of the Judicial Council;

(3) issue all notices, processes, and summonses as authorized by law;

(4) keep a record of all proceedings, actions, orders, judgments, and decrees of the court;

(5) take and certify acknowledgments and administer oaths;

(6) supervise the deputy clerks as required to perform the duties of the clerk's office; and

(7) perform other duties as required by the presiding judge, the court executive, applicable law, and the rules of the Judicial Council.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-5-109. Costs of system.

(1) The cost of salaries, travel, and training required for the discharge of the duties of district court judges, court commissioners, secretaries of judges or court executives, court executives, and court reporters shall be paid from appropriations made by the Legislature.

(2) Except as provided in Subsection (1), the Judicial Council may directly provide for the actual and necessary expenses of operation of the district court, including personnel salary and benefits, travel, training, facilities, security, equipment, furniture, supplies, legal reference materials, and other operating expenses, or may contract with the county in a county seat or with the unit of local government in municipalities other than a county seat for the actual and necessary expenses of the district court. Any necessary contract with the county or unit of local government shall be pursuant to Subsection 78A-5-111(4).

Renumbered and Amended by Chapter 3, 2008 General Session

78A-5-110. Allocation of district court fees and forfeitures.

(1) Except as provided in this section, district court fines and forfeitures collected for violation of state statutes shall be paid to the state treasurer.

(2) Fines and forfeitures collected by the court for violation of a state statute or county or municipal ordinance constituting a misdemeanor or an infraction shall be remitted 1/2 to the state treasurer and 1/2 to the treasurer of the state or local governmental entity which prosecutes or which would prosecute the violation.

(3) Fines and forfeitures collected for violations of Title 23, Wildlife Resources Code of Utah, Title 41, Chapter 22, Off-highway Vehicles, or Title 73, Chapter 18, State Boating Act, shall be paid to the state treasurer.

(a) For violations of Title 23, the state treasurer shall allocate 85% to the Division of Wildlife Resources and 15% to the General Fund.

(b) For violations of Title 41, Chapter 22, or Title 73, Chapter 18, the state treasurer shall allocate 85% to the Division of Parks and Recreation and 15% to the General Fund.

(4) Fines and forfeitures collected for violation of Section 72-7-404 or 72-7-406, less fees established by the Judicial Council, shall be paid to the state treasurer for deposit in the B and C road account. Fees established by the Judicial Council shall be deposited in the state General Fund. Money deposited in the class B and C road account is supplemental to the money appropriated under Section 72-2-107 but shall be

expended in the same manner as other class B and C road funds.

(5) (a) Fines and forfeitures collected by the court for a second or subsequent violation under Section 41-6a-1713 or Subsection 72-7-409(8)(b) shall be remitted:

(i) 60% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 40% in accordance with Subsection (2).

(b) Fines and forfeitures collected by the court for a second or subsequent violation under Subsection 72-7-409(8)(c) shall be remitted:

(i) 50% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 50% in accordance with Subsection (2).

(6) Fines and forfeitures collected for any violations not specified in this chapter or otherwise provided for by law shall be paid to the state treasurer.

(7) Fees collected in connection with civil actions filed in the district court shall be paid to the state treasurer.

(8) The court shall remit money collected in accordance with Title 51, Chapter 7, State Money Management Act.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 22, 2008 General Session

78A-5-111. Transfer of court operating responsibilities -- Facilities -- Staff -- Budget.

(1) A county's determination to transfer responsibility for operation of the district court to the state is irrevocable.

(2) (a) Court space suitable for the conduct of judicial business as specified by the Judicial Council shall be provided by the state from appropriations made by the Legislature for these purposes.

(b) The state may, in order to carry out its obligation to provide these facilities, lease space from a county, or reimburse a county for the number of square feet used by the district. Any lease and reimbursement shall be determined in accordance with the standards of the State Building Board applicable to state agencies generally. A county or municipality terminating a lease with the court shall provide written notice to the Judicial Council at least one year prior to the effective date of the termination.

(c) District courts shall be located in municipalities that are sites for the district court or circuit court as of January 1, 1994. Removal of the district court from the municipality shall require prior legislative approval by joint resolution.

(3) The state shall provide legal reference materials for all district judges' chambers and courtrooms, as required by Judicial Council rule. Maintenance of county law libraries shall be in consultation with the court executive of the district court.

(4) (a) At the request of the Judicial Council, the county or municipality shall provide staff for the district court in county seats or municipalities under contract with the administrative office of the courts.

(b) Payment for necessary expenses shall be by a contract entered into annually between the state and the county or municipality, which shall specifically state the agreed costs of personnel, supplies, and services, as well as the method and terms of payment.

(c) Workload measures prepared by the state court administrator and projected

costs for the next fiscal year shall be considered in the negotiation of contracts.

(d) Each May 1 preceding the general session of the Legislature, the county or municipality shall submit a budget request to the Judicial Council, the governor, and the legislative fiscal analyst for services to be rendered as part of the contract under Subsection (4)(b) for the fiscal year immediately following the legislative session. The Judicial Council shall consider this information in developing its budget request. The legislative fiscal analyst shall provide the Legislature with the county's or municipality's original estimate of expenses. By June 15 preceding the state's fiscal year, the county and the state court administrator shall negotiate a contract to cover expenses in accordance with the appropriation approved by the Legislature. The contracts may not include payments for expenses of service of process, indigent defense costs, or other costs or expenses provided by law as an obligation of the county or municipality.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-5-201. Creation and expansion of existing drug court programs -- Definition of drug court program -- Criteria for participation in drug court programs -- Reporting requirements.

(1) There may be created a drug court program in any judicial district that demonstrates:

(a) the need for a drug court program; and

(b) the existence of a collaborative strategy between the court, prosecutors, defense counsel, corrections, and substance abuse treatment services to reduce substance abuse by offenders.

(2) The collaborative strategy in each drug court program shall:

(a) include monitoring and evaluation components to measure program effectiveness; and

(b) be submitted to, for the purpose of coordinating the disbursement of funding, the:

(i) executive director of the Department of Human Services;

(ii) executive director of the Department of Corrections; and

(iii) state court administrator.

(3) (a) Funds disbursed to a drug court program shall be allocated as follows:

(i) 87% to the Department of Human Services for testing, treatment, and case management; and

(ii) 13% to the Administrative Office of the Courts for increased judicial and court support costs.

(b) This provision does not apply to Federal Block Grant funds.

(4) A drug court program shall include continuous judicial supervision using a cooperative approach with prosecutors, defense counsel, corrections, substance abuse treatment services, juvenile court probation, and the Division of Child and Family Services as appropriate to promote public safety, protect participants' due process rights, and integrate substance abuse treatment with justice system case processing.

(5) Screening criteria for participation in a drug court program shall include:

(a) a plea to, conviction of, or adjudication for a nonviolent drug offense or drug-related offense;

(b) an agreement to frequent alcohol and other drug testing;
(c) participation in one or more substance abuse treatment programs; and
(d) an agreement to submit to sanctions for noncompliance with drug court program requirements.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-5-202. Creation of Drug Board Pilot Project -- Definition of Drug Board Pilot Project -- Criteria for parolee participation in the Drug Board Pilot Project -- Reporting requirements.

(1) There may be created a Drug Board Pilot Project in Davis and Weber counties that includes intensive substance abuse treatment, frequent drug testing, and other additional conditions of parole, with the expectation that the offender will be required to complete the substance abuse treatment, remain drug free, and meet all other conditions of parole.
(2) Screening criteria for parolee participation in the Drug Board Pilot Project shall:
(a) be determined by the Board of Pardons and Parole and the Department of Corrections; and
(b) include parolees who are facing an eminent return to prison due to substance abuse.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-101. Title.

This chapter is known as the "Juvenile Court Act."

Amended by Chapter 316, 2012 General Session

78A-6-102. Establishment of juvenile court -- Organization and status of court -- Purpose.

(1) There is established for the state a juvenile court.
(2) The juvenile court is a court of record. It shall have a seal, and its judges, clerks, and referees have the power to administer oaths and affirmations.
(3) The juvenile court is of equal status with the district courts of the state.
(4) The juvenile court is established as a forum for the resolution of all matters properly brought before it, consistent with applicable constitutional and statutory requirements of due process.
(5) The purpose of the court under this chapter is to:
(a) promote public safety and individual accountability by the imposition of appropriate sanctions on persons who have committed acts in violation of law;
(b) order appropriate measures to promote guidance and control, preferably in the minor's own home, as an aid in the prevention of future unlawful conduct and the development of responsible citizenship;
(c) where appropriate, order rehabilitation, reeducation, and treatment for persons who have committed acts bringing them within the court's jurisdiction;

(d) adjudicate matters that relate to minors who are beyond parental or adult control and to establish appropriate authority over these minors by means of placement and control orders;

(e) adjudicate matters that relate to abused, neglected, and dependent children and to provide care and protection for minors by placement, protection, and custody orders;

(f) remove a minor from parental custody only where the minor's safety or welfare, or the public safety, may not otherwise be adequately safeguarded; and

(g) consistent with the ends of justice, act in the best interests of the minor in all cases and preserve and strengthen family ties.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-103. Jurisdiction of juvenile court -- Original -- Exclusive.

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding offenses in Subsection 78A-7-106(2);

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed before the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

(c) a child who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78A-6-105;

(d) a protective order for a child pursuant to the provisions of Title 78B, Chapter 7, Part 2, Child Protective Orders, which the juvenile court may transfer to the district court if the juvenile court has entered an ex parte protective order and finds that:

(i) the petitioner and the respondent are the natural parent, adoptive parent, or step parent of the child who is the object of the petition;

(ii) the district court has a petition pending or an order related to custody or parent-time entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the respondent are parties; and

(iii) the best interests of the child will be better served in the district court;

(e) appointment of a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

(f) the emancipation of a minor in accordance with Part 8, Emancipation;

(g) the termination of the legal parent-child relationship in accordance with Part 5, Termination of Parental Rights Act, including termination of residual parental rights and duties;

(h) the treatment or commitment of a minor who has an intellectual disability;

(i) a minor who is a habitual truant from school;

(j) the judicial consent to the marriage of a child under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or

enlistment of a child when consent is required by law;

(k) any parent or parents of a child committed to a secure youth corrections facility, to order, at the discretion of the court and on the recommendation of a secure facility, the parent or parents of a child committed to a secure facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure facility therapist, who has supervision of that parent's or parents' child, or any other therapist the court may direct, for a period directed by the court as recommended by a secure facility;

(l) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

(m) the treatment or commitment of a child with a mental illness. The court may commit a child to the physical custody of a local mental health authority in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State Hospital;

(n) the commitment of a child to a secure drug or alcohol facility in accordance with Section 62A-15-301;

(o) a minor found not competent to proceed pursuant to Section 78A-6-1301;

(p) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section 63G-4-402; and

(q) adoptions conducted in accordance with the procedures described in Title 78B, Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the child.

(2) Notwithstanding Section 78A-7-106 and Subsection 78A-5-102(9), the juvenile court has exclusive jurisdiction over the following offenses committed by a child:

(a) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(b) Section 73-18-12, reckless operation; and

(c) class B and C misdemeanors, infractions, or violations of ordinances that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(3) The juvenile court has jurisdiction over an ungovernable or runaway child who is referred to it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that child where, despite earnest and persistent efforts by the division or agency, the child has demonstrated that the child:

(a) is beyond the control of the child's parent, guardian, lawful custodian, or school authorities to the extent that the child's behavior or condition endangers the child's own welfare or the welfare of others; or

(b) has run away from home.

(4) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

(5) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78A-6-702.

(6) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section 78A-6-323.

(7) The juvenile court has jurisdiction of matters transferred to it by another trial court pursuant to Subsection 78A-7-106(7).

Amended by Chapter 316, 2012 General Session

78A-6-104. Concurrent jurisdiction -- District court and juvenile court.

(1) The district court or other court has concurrent jurisdiction with the juvenile court as follows:

(a) when a person who is 18 years of age or older and who is under the continuing jurisdiction of the juvenile court under Section 78A-6-117 violates any federal, state, or local law or municipal ordinance; and

(b) in establishing paternity and ordering testing for the purposes of establishing paternity, in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act, with regard to proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of Parental Rights Act.

(2) The juvenile court has jurisdiction over petitions to modify a minor's birth certificate if the court otherwise has jurisdiction over the minor.

(3) This section does not deprive the district court of jurisdiction to appoint a guardian for a child, or to determine the support, custody, and parent-time of a child upon writ of habeas corpus or when the question of support, custody, and parent-time is incidental to the determination of a cause in the district court.

(4) (a) Where a support, custody, or parent-time award has been made by a district court in a divorce action or other proceeding, and the jurisdiction of the district court in the case is continuing, the juvenile court may acquire jurisdiction in a case involving the same child if the child is dependent, abused, neglected, or otherwise comes within the jurisdiction of the juvenile court under Section 78A-6-103.

(b) The juvenile court may, by order, change the custody, subject to Subsection 30-3-10(4), support, parent-time, and visitation rights previously ordered in the district court as necessary to implement the order of the juvenile court for the safety and welfare of the child. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court continues.

(c) When a copy of the findings and order of the juvenile court has been filed with the district court, the findings and order of the juvenile court are binding on the parties to the divorce action as though entered in the district court.

(5) The juvenile court has jurisdiction over questions of custody, support, and parent-time, of a minor who comes within the court's jurisdiction under this section or Section 78A-6-103.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-105. Definitions.

As used in this chapter:

(1) (a) "Abuse" means:

(i) nonaccidental harm of a child;

(ii) threatened harm of a child;

(iii) sexual exploitation; or

(iv) sexual abuse.

(b) "Abuse" does not include:

(i) reasonable discipline or management of a child, including withholding privileges;

(ii) conduct described in Section 76-2-401; or

(iii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1)(b)(iii)(A) through (C).

(2) "Abused child" means a child who has been subjected to abuse.

(3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved. A finding of not competent to proceed pursuant to Section 78A-6-1302 is not an adjudication.

(4) "Adult" means a person 18 years of age or over, except that a person 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall be referred to as a minor.

(5) "Board" means the Board of Juvenile Court Judges.

(6) "Child" means a person under 18 years of age.

(7) "Child placement agency" means:

(a) a private agency licensed to receive a child for placement or adoption under this code; or

(b) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(8) "Clandestine laboratory operation" is as defined in Section 58-37d-3.

(9) "Commit" means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years of age, to transfer custody.

(10) "Court" means the juvenile court.

(11) "Dependent child" includes a child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

(12) "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(13) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:

(a) pending court disposition or transfer to another jurisdiction; or

(b) while under the continuing jurisdiction of the court.

(14) "Division" means the Division of Child and Family Services.

(15) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

(16) "Group rehabilitation therapy" means psychological and social counseling of

one or more persons in the group, depending upon the recommendation of the therapist.

(17) "Guardianship of the person" includes the authority to consent to:

(a) marriage;

(b) enlistment in the armed forces;

(c) major medical, surgical, or psychiatric treatment; or

(d) legal custody, if legal custody is not vested in another person, agency, or institution.

(18) "Habitual truant" is as defined in Section 53A-11-101.

(19) "Harm" means:

(a) physical, emotional, or developmental injury or damage;

(b) sexual abuse; or

(c) sexual exploitation.

(20) (a) "Incest" means engaging in sexual intercourse with a person whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(b) The relationships described in Subsection (20)(a) include:

(i) blood relationships of the whole or half blood, without regard to legitimacy;

(ii) relationships of parent and child by adoption; and

(iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

(21) "Intellectual disability" means:

(a) significantly subaverage intellectual functioning, an IQ of approximately 70 or below on an individually administered IQ test, for infants, a clinical judgment of significantly subaverage intellectual functioning;

(b) concurrent deficits or impairments in present adaptive functioning, the person's effectiveness in meeting the standards expected for his or her age by the person's cultural group, in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety; and

(c) the onset is before the person reaches the age of 18 years.

(22) "Legal custody" means a relationship embodying the following rights and duties:

(a) the right to physical custody of the minor;

(b) the right and duty to protect, train, and discipline the minor;

(c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

(d) the right to determine where and with whom the minor shall live; and

(e) the right, in an emergency, to authorize surgery or other extraordinary care.

(23) "Mental disorder" means a serious emotional and mental disturbance that severely limits a minor's development and welfare over a significant period of time.

(24) "Minor" means:

(a) a child; or

(b) a person who is:

(i) at least 18 years of age and younger than 21 years of age; and

(ii) under the jurisdiction of the juvenile court.

(25) "Molestation" means that a person, with the intent to arouse or gratify the sexual desire of any person:

(a) touches the anus or any part of the genitals of a child;

(b) takes indecent liberties with a child; or

(c) causes a child to take indecent liberties with the perpetrator or another.

(26) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(27) (a) "Neglect" means action or inaction causing:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

(iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, or any other care necessary for the child's health, safety, morals, or well-being; or

(iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused.

(b) The aspect of neglect relating to education, described in Subsection (27)(a)(iii), means that, after receiving a notice of compulsory education violation under Section 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(d) (i) Notwithstanding Subsection (27)(a), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(ii) Nothing in Subsection (27)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

(28) "Neglected child" means a child who has been subjected to neglect.

(29) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

(a) the assigned probation officer; and

(b) (i) the minor; or

(ii) the minor and the minor's parent, legal guardian, or custodian.

(30) "Not competent to proceed" means that a minor, due to a mental disorder, intellectual disability, or related condition as defined, lacks the ability to:

(a) understand the nature of the proceedings against them or of the potential disposition for the offense charged; or

(b) consult with counsel and participate in the proceedings against them with a reasonable degree of rational understanding.

(31) "Physical abuse" means abuse that results in physical injury or damage to a child.

(32) "Probation" means a legal status created by court order following an

adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the minor is permitted to remain in the minor's home under prescribed conditions and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

(33) "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

(34) "Related condition" means a condition closely related to intellectual disability in accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah Administrative Code.

(35) (a) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

(i) the responsibility for support;

(ii) the right to consent to adoption;

(iii) the right to determine the child's religious affiliation; and

(iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to:

(i) marriage;

(ii) enlistment; and

(iii) major medical, surgical, or psychiatric treatment.

(36) "Secure facility" means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

(37) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

(38) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

(39) "Sexual abuse" means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation directed towards a child; or

(b) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense:

(i) Title 76, Chapter 5, Part 4, Sexual Offenses;

(ii) child bigamy, Section 76-7-101.5;

(iii) incest, Section 76-7-102;

(iv) lewdness, Section 76-9-702;

(v) sexual battery, Section 76-9-702.1;

(vi) lewdness involving a child, Section 76-9-702.5; or

(vii) voyeurism, Section 76-9-702.7.

(40) "Sexual exploitation" means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

(i) pose in the nude for the purpose of sexual arousal of any person; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

(i) in the nude, for the purpose of sexual arousal of any person; or

(ii) engaging in sexual or simulated sexual conduct; or

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201, Sexual Exploitation of a Minor, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense.

(41) "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

(42) "State supervision" means a disposition that provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Juvenile Justice Services.

(43) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

(44) "Substantiated" is as defined in Section 62A-4a-101.

(45) "Supported" is as defined in Section 62A-4a-101.

(46) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(47) "Therapist" means:

(a) a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(b) any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(48) "Unsubstantiated" is as defined in Section 62A-4a-101.

(49) "Without merit" is as defined in Section 62A-4a-101.

Amended by Chapter 49, 2012 General Session
Amended by Chapter 303, 2012 General Session
Amended by Chapter 316, 2012 General Session

78A-6-106. Search warrants and subpoenas -- Authority to issue -- Protective custody -- Expedited hearing.

(1) The court has authority to issue search warrants, subpoenas, or investigative subpoenas in criminal cases, delinquency, and abuse, neglect, and dependency proceedings for the same purposes, in the same manner and pursuant to the same procedures set forth in the code of criminal procedure for the issuance of search warrants, subpoenas, or investigative subpoenas in other trial courts in the state.

(2) A peace officer or child welfare worker may not enter the home of a child who is not under the jurisdiction of the court, remove a child from the child's home or school, or take a child into protective custody unless:

(a) there exist exigent circumstances sufficient to relieve the peace officer or child welfare worker of the requirement to obtain a warrant;

(b) the peace officer or child welfare worker obtains a search warrant under Subsection (3);

(c) the peace officer or child welfare worker obtains a court order after the parent or guardian of the child is given notice and an opportunity to be heard; or

(d) the peace officer or child welfare worker obtains the consent of the child's parent or guardian.

(3) (a) The court may issue a warrant authorizing a child protective services worker or peace officer to search for a child and take the child into protective custody if it appears to the court upon a verified petition, recorded sworn testimony or an affidavit sworn to by a peace officer or any other person, and upon the examination of other witnesses, if required by the judge, that there is probable cause to believe that:

(i) there is a threat of substantial harm to the child's health or safety;

(ii) it is necessary to take the child into protective custody to avoid the harm described in Subsection (3)(a)(i); and

(iii) it is likely that the child will suffer substantial harm if the parent or guardian of the child is given notice and an opportunity to be heard before the child is taken into protective custody.

(b) Pursuant to Section 77-23-210, a peace officer making the search may enter a house or premises by force, if necessary, in order to remove the child.

(c) The person executing the warrant shall then take the child to the place of shelter designated by the court or the division.

(4) (a) Consistent with Subsection (5), the court shall hold an expedited hearing to determine whether a child should be placed in protective custody if:

(i) a person files a petition under Section 78A-6-304;

(ii) a party to the proceeding files a "Motion for Expedited Placement in Temporary Custody"; and

(iii) notice of the hearing described in this Subsection (4)(a) is served consistent with the requirements for notice of a shelter hearing under Section 78A-6-306.

(b) The hearing described in Subsection (4)(a):

(i) shall be held within 72 hours, excluding weekends and holidays, of the filing of the motion described in Subsection (4)(a)(ii); and

(ii) shall be considered a shelter hearing under Section 78A-6-306 and Utah Rules of Juvenile Procedure, Rule 13.

(5) (a) The hearing and notice described in Subsection (4) are subject to:

(i) Section 78A-6-306;

(ii) Section 78A-6-307; and

(iii) the Utah Rules of Juvenile Procedure.

(b) After the hearing described in Subsection (4), a court may order a child placed in the temporary custody of the division.

(6) When notice to a parent or guardian is required by this section:

(a) the parent or guardian to be notified must be:

(i) the child's primary caregiver; or

(ii) the parent or guardian who has custody of the child, when the order is sought; and

(b) the person required to provide notice shall make a good faith effort to provide notice to a parent or guardian who:

(i) is not required to be notified under Subsection (6)(a); and
(ii) has the right to parent-time with the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-107. Expedited filing of petition -- Expedited hearings.

(1) For purposes of this section, "petition" means a petition, under Section 78A-6-304, to commence proceedings in a juvenile court alleging that a child is:
(a) abused;
(b) neglected; or
(c) dependent.
(2) If a petition is requested by the division, the attorney general shall file the petition within 72 hours of the completion of the division's investigation and request, excluding weekends and holidays, if:
(a) the child who is the subject of the requested petition is not removed from the child's home by the division; and
(b) without an expedited hearing and services ordered under the protective supervision of the court, the child will likely be taken into protective custody.
(3) The court shall give scheduling priority to the pretrial and adjudication hearings on a petition if:
(a) the child who is the subject of the petition is not in:
(i) protective custody; or
(ii) temporary custody; and
(b) the division indicates in the petition that, without expedited hearings and services ordered under the protective supervision of the court, the child will likely be taken into protective custody.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-108. Title of petition and other court documents -- Form and contents of petition -- Order for temporary custody or protective services -- Physical or psychological examination of minor, parent, or guardian -- Dismissal of petition.

(1) The petition and all subsequent court documents in the proceeding shall be entitled:
"State of Utah, in the interest of....., a person under 18 years of age (or a person under 21 years of age)."
(2) The petition shall be verified and statements in the petition may be made upon information and belief.
(3) The petition shall be written in simple and brief language and include the facts which bring the minor within the jurisdiction of the court, as provided in Section 78A-6-103.
(4) The petition shall further state:
(a) the name, age, and residence of the minor;
(b) the names and residences of the minor's parents;
(c) the name and residence of the guardian, if there is one;

(d) the name and address of the nearest known relative, if no parent or guardian of a minor is known; and

(e) the name and residence of the person having physical custody of the minor. If any of the facts required are not known by the petitioner, the petition shall so state.

(5) At any time after a petition is filed, the court may make an order:

(a) providing for temporary custody of the minor; or

(b) that the Division of Child and Family Services provide protective services to the child, if the court determines that:

(i) the child is at risk of being removed from the child's home due to abuse or neglect; and

(ii) the provision of protective services may make the removal described in Subsection (5)(b)(i) unnecessary.

(6) The court may order that a minor concerning whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist, or psychologist and may place the minor in a hospital or other facility for examination. After notice and a hearing set for the specific purpose, the court may order a similar examination of a parent or guardian whose ability to care for a minor is at issue, if the court finds from the evidence presented at the hearing that the parent's or guardian's physical, mental, or emotional condition may be a factor in causing the neglect, dependency, or delinquency of the minor.

(7) Pursuant to Rule 506(d)(3), Utah Rules of Evidence, examinations conducted pursuant to Subsection (6) are not privileged communications, but are exempt from the general rule of privilege.

(8) The court may dismiss a petition at any stage of the proceedings.

(9) If the petition is filed under Section 78A-6-304 or 78A-6-505 or if the matter is referred to the court under Subsection 78A-6-104(5), the court may require the parties to participate in mediation in accordance with Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-109. Summons -- Service and process -- Issuance and contents -- Notice to absent parent or guardian -- Emergency medical or surgical treatment -- Compulsory process for attendance of witnesses when authorized.

(1) After a petition is filed the court shall promptly issue a summons, unless the judge directs that a further investigation is needed. No summons is required as to any person who appears voluntarily or who files a written waiver of service with the clerk of the court at or prior to the hearing.

(2) The summons shall contain:

(a) the name of the court;

(b) the title of the proceedings; and

(c) except for a published summons, a brief statement of the substance of the allegations in the petition.

(3) A published summons shall state:

(a) that a proceeding concerning the minor is pending in the court; and

(b) an adjudication will be made.

(4) The summons shall require the person or persons who have physical custody of the minor to appear personally and bring the minor before the court at a time and place stated. If the person or persons summoned are not the parent, parents, or guardian of the minor, the summons shall also be issued to the parent, parents, or guardian, as the case may be, notifying them of the pendency of the case and of the time and place set for the hearing.

(5) Summons may be issued requiring the appearance of any other person whose presence the court finds necessary.

(6) If it appears to the court that the welfare of the minor or of the public requires that the minor be taken into custody, the court may by endorsement upon the summons direct that the person serving the summons take the minor into custody at once.

(7) Subject to Subsection 78A-6-117(2)(n)(iii), upon the sworn testimony of one or more reputable physicians, the court may order emergency medical or surgical treatment that is immediately necessary for a minor concerning whom a petition has been filed pending the service of summons upon the minor's parents, guardian, or custodian.

(8) A parent or guardian is entitled to the issuance of compulsory process for the attendance of witnesses on the parent's or guardian's own behalf or on behalf of the minor. A guardian ad litem or a probation officer is entitled to compulsory process for the attendance of witnesses on behalf of the minor.

(9) Service of summons and process and proof of service shall be made in the manner provided in the Utah Rules of Civil Procedure.

(10) Service of summons or process shall be made by the sheriff of the county where the service is to be made, or by his deputy; but upon request of the court service shall be made by any other peace officer, or by another suitable person selected by the court.

(11) Service of summons in the state shall be made personally, by delivering a copy to the person summoned; provided, however, that parents of a minor living together at their usual place of abode may both be served by personal delivery to either parent of copies of the summons, one copy for each parent.

(12) If the judge makes a written finding that he has reason to believe that personal service of the summons will be unsuccessful, or will not accomplish notification within a reasonable time after issuance of the summons, he may order service by registered mail, with a return receipt to be signed by the addressee only, to be addressed to the last-known address of the person to be served in the state. Service shall be complete upon return to the court of the signed receipt.

(13) If the parents, parent, or guardian required to be summoned under Subsection (4) cannot be found within the state, the fact of their minor's presence within the state shall confer jurisdiction on the court in proceedings in a minor's case under this chapter as to any absent parent or guardian, provided that due notice has been given in the following manner:

(a) If the address of the parent or guardian is known, due notice is given by sending him a copy of the summons by registered mail with a return receipt to be signed by the addressee only, or by personal service outside the state, as provided in the Utah Rules of Civil Procedure. Service by registered mail shall be complete upon return to the court of the signed receipt.

(b) (i) If the address or whereabouts of the parent or guardian outside the state cannot after diligent inquiry be ascertained, due notice is given by publishing a summons:

(A) in a newspaper having general circulation in the county in which the proceeding is pending once a week for four successive weeks; and

(B) in accordance with Section 45-1-101 for four weeks.

(ii) Service shall be complete on the day of the last publication.

(c) Service of summons as provided in this subsection shall vest the court with jurisdiction over the parent or guardian served in the same manner and to the same extent as if the person served was served personally within the state.

(14) In the case of service in the state, service completed not less than 48 hours before the time set in the summons for the appearance of the person served, shall be sufficient to confer jurisdiction. In the case of service outside the state, service completed not less than five days before the time set in the summons for appearance of the person served, shall be sufficient to confer jurisdiction.

(15) Computation of periods of time under this chapter shall be made in accordance with the Utah Rules of Civil Procedure.

Amended by Chapter 388, 2009 General Session

78A-6-110. Venue -- Transfer or certification to other districts -- Dismissal without adjudication on merits.

(1) Proceedings in minor's cases shall be commenced in the court of the district in which the minor is living or is found, or in which an alleged violation of law or ordinance occurred.

(2) After the filing of a petition, the court may transfer the case to the district where the minor resides or to the district where the violation of law or ordinance is alleged to have occurred. The court may, in its discretion, after adjudication certify the case for disposition to the court of the district in which the minor resides.

(3) The transferring or certifying court shall transmit all documents and legal and social records, or certified copies to the receiving court, and the receiving court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in that court.

(4) The dismissal of a petition in one district where the dismissal is without prejudice and where there has been no adjudication upon the merits shall not preclude refiling within the same district or another district where there is venue of the case.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-111. Appearances -- Parents, guardian, or legal custodian to appear with minor or child -- Failure to appear -- Contempt -- Warrant of arrest, when authorized -- Parent's employer to grant time off -- Appointment of guardian ad litem.

(1) Any person required to appear who, without reasonable cause, fails to appear may be proceeded against for contempt of court, and the court may cause a bench warrant to issue to produce the person in court.

(2) In all cases when a minor is required to appear in court, the parents, guardian, or other person with legal custody of the minor shall appear with the minor unless excused by the judge.

(a) An employee may request permission to leave the workplace for the purpose of attending court if the employee has been notified by the juvenile court that his minor is required to appear before the court.

(b) An employer must grant permission to leave the workplace with or without pay if the employee has requested permission at least seven days in advance or within 24 hours of the employee receiving notice of the hearing.

(3) If a parent or other person who signed a written promise to appear and bring the child to court under Section 78A-6-112 or 78A-6-113 fails to appear and bring the child to court on the date set in the promise, or, if the date was to be set, after notification by the court, a warrant may be issued for the apprehension of that person or the child, or both.

(4) Willful failure to perform the promise is a misdemeanor if, at the time of the execution of the promise, the promisor is given a copy of the promise which clearly states that failure to appear and have the child appear as promised is a misdemeanor. The juvenile court shall have jurisdiction to proceed against the promisor in adult proceedings pursuant to Part 10, Adult Offenses.

(5) The court shall endeavor, through use of the warrant of arrest if necessary, as provided in Subsection (6), or by other means, to ensure the presence at all hearings of one or both parents or of the guardian of a child. If neither a parent nor guardian is present at the court proceedings, the court may appoint a guardian ad litem to protect the interest of a minor. A guardian ad litem may also be appointed whenever necessary for the welfare of a minor, whether or not a parent or guardian is present.

(6) A warrant may be issued for a parent, a guardian, a custodian, or a minor if:

(a) a summons is issued but cannot be served;

(b) it is made to appear to the court that the person to be served will not obey the summons;

(c) serving the summons will be ineffectual; or

(d) the welfare of the minor requires that he be brought immediately into the custody of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-112. Minor taken into custody by peace officer, private citizen, or probation officer -- Grounds -- Notice requirements -- Release or detention -- Grounds for peace officer to take adult into custody.

(1) A minor may be taken into custody by a peace officer without order of the court if:

(a) in the presence of the officer the minor has violated a state law, federal law, local law, or municipal ordinance;

(b) there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony;

(c) the minor:

(i) (A) is seriously endangered in the minor's surroundings; or

(B) seriously endangers others; and

(ii) immediate removal appears to be necessary for the minor's protection or the protection of others;

(d) there are reasonable grounds to believe the minor has run away or escaped from the minor's parents, guardian, or custodian; or

(e) there is reason to believe that the minor is:

(i) subject to the state's compulsory education law; and

(ii) absent from school without legitimate or valid excuse, subject to Section 53A-11-105.

(2) (a) A private citizen or a probation officer may take a minor into custody if under the circumstances he could make a citizen's arrest if the minor was an adult.

(b) A probation officer may also take a minor into custody under Subsection (1) or if the minor has violated the conditions of probation, if the minor is under the continuing jurisdiction of the juvenile court or in emergency situations in which a peace officer is not immediately available.

(3) (a) (i) If an officer or other person takes a minor into temporary custody, he shall without unnecessary delay notify the parents, guardian, or custodian.

(ii) The minor shall then be released to the care of the minor's parent or other responsible adult, unless the minor's immediate welfare or the protection of the community requires the minor's detention.

(b) If the minor is taken into custody or detention for a violent felony, as defined in Section 76-3-203.5, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the officer or other law enforcement agent taking the minor into custody shall, as soon as practicable or as established under Subsection 53A-11-1001(2), notify the school superintendent of the district in which the minor resides or attends school for the purposes of the minor's supervision and student safety.

(i) The notice shall disclose only:

(A) the name of the minor;

(B) the offense for which the minor was taken into custody or detention; and

(C) if available, the name of the victim, if the victim:

(I) resides in the same school district as the minor; or

(II) attends the same school as the minor.

(ii) The notice shall be classified as a protected record under Section 63G-2-305.

(iii) All other records disclosures are governed by Title 63G, Chapter 2, Government Records Access and Management Act and the Federal Family Educational Rights and Privacy Act.

(c) Employees of a governmental agency are immune from any criminal liability for providing or failing to provide the information required by this section unless the person acts or fails to act due to malice, gross negligence, or deliberate indifference to the consequences.

(d) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms supplied by the court to bring the minor to the court at a time set or to be set by the court.

(4) (a) A child may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain the child's name, age, residence, and other necessary information and to contact the child's parents, guardian, or custodian.

(b) If the minor is not released under Subsection (3), the minor shall be taken to a place of detention or shelter without unnecessary delay.

(5) (a) The person who takes a minor to a detention or shelter facility shall promptly file with the detention or shelter facility a written report on a form provided by the division stating the details of the presently alleged offense, the facts which bring the minor within the jurisdiction of the juvenile court, and the reason the minor was not released by law enforcement.

(b) (i) The designated youth corrections facility staff person shall immediately review the form and determine, based on the guidelines for detention admissions established by the Division of Juvenile Justice Services under Section 62A-7-202, whether to admit the minor to secure detention, admit the minor to home detention, place the minor in a placement other than detention, or return the minor home upon written promise to bring the minor to the court at a time set, or without restriction.

(ii) If the designated youth corrections facility staff person determines to admit the minor to home detention, that staff person shall notify the juvenile court of that determination. The court shall order that notice be provided to the designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends of the home detention. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iii) Any employee of the local law enforcement agency and the school which the minor attends who discloses the notification of home detention is not:

(A) civilly liable except when disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and

(B) civilly or criminally liable except when disclosure constitutes a knowing violation of Section 63G-2-801.

(c) A minor may not be admitted to detention unless the minor is detainable based on the guidelines or the minor has been brought to detention pursuant to a judicial order or division warrant pursuant to Section 62A-7-504.

(d) If a minor taken to detention does not qualify for admission under the guidelines established by the division under Section 62A-7-104, detention staff shall arrange appropriate placement.

(e) If a minor is taken into custody and admitted to a secure detention or shelter facility, facility staff shall:

(i) immediately notify the minor's parents, guardian, or custodian; and

(ii) promptly notify the court of the placement.

(f) If the minor is admitted to a secure detention or shelter facility outside the county of the minor's residence and it is determined in the hearing held under Subsection 78A-6-113(3) that detention shall continue, the judge or commissioner shall direct the sheriff of the county of the minor's residence to transport the minor to a detention or shelter facility as provided in this section.

(6) A person may be taken into custody by a peace officer without a court order if the person is in apparent violation of a protective order or if there is reason to believe that a child is being abused by the person and any of the situations outlined in Section 77-7-2 exist.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-113. Placement of minor in detention or shelter facility -- Grounds -- Detention hearings -- Period of detention -- Notice -- Confinement for criminal proceedings -- Bail laws inapplicable -- Exception.

(1) (a) A minor may not be placed or kept in a secure detention facility pending court proceedings unless it is unsafe for the public to leave the minor with the minor's parents, guardian, or custodian and the minor is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(b) A child who must be taken from the child's home but who does not require physical restriction shall be given temporary care in a shelter facility and may not be placed in a detention facility.

(c) A child may not be placed or kept in a shelter facility pending court proceedings unless it is unsafe to leave the child with the child's parents, guardian, or custodian.

(2) After admission of a child to a detention facility pursuant to the guidelines established by the Division of Juvenile Justice Services and immediate investigation by an authorized officer of the court, the judge or the officer shall order the release of the child to the child's parents, guardian, or custodian if it is found the child can be safely returned to their care, either upon written promise to bring the child to the court at a time set or without restriction.

(a) If a child's parent, guardian, or custodian fails to retrieve the child from a facility within 24 hours after notification of release, the parent, guardian, or custodian is responsible for the cost of care for the time the child remains in the facility.

(b) The facility shall determine the cost of care.

(c) Any money collected under this Subsection (2) shall be retained by the Division of Juvenile Justice Services to recover the cost of care for the time the child remains in the facility.

(3) (a) When a child is detained in a detention or shelter facility, the parents or guardian shall be informed by the person in charge of the facility that they have the right to a prompt hearing in court to determine whether the child is to be further detained or released.

(b) When a minor is detained in a detention facility, the minor shall be informed by the person in charge of the facility that the minor has the right to a prompt hearing in court to determine whether the minor is to be further detained or released.

(c) Detention hearings shall be held by the judge or by a commissioner.

(d) The court may, at any time, order the release of the minor, whether a detention hearing is held or not.

(e) If a child is released, and the child remains in the facility, because the parents, guardian, or custodian fails to retrieve the child, the parents, guardian, or custodian shall be responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

(4) (a) A minor may not be held in a detention facility longer than 48 hours prior to a detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention.

(b) A child may not be held in a shelter facility longer than 48 hours prior to a shelter hearing, excluding weekends and holidays, unless a court order for extended shelter has been entered by the court after notice to all parties described in Section

78A-6-306.

(c) A hearing for detention or shelter may not be waived. Detention staff shall provide the court with all information received from the person who brought the minor to the detention facility.

(d) If the court finds at a detention hearing that it is not safe to release the minor, the judge or commissioner may order the minor to be held in the facility or be placed in another appropriate facility, subject to further order of the court.

(e) (i) After a detention hearing has been held, only the court may release a minor from detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued detention is necessary.

(ii) After a detention hearing for a violent felony, as defined in Section 76-3-203.5, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the court shall direct that notice of its decision, including any disposition, order, or no contact orders, be provided to designated persons in the appropriate local law enforcement agency and district superintendent or the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iii) Any employee of the local law enforcement agency, school district, and the school that the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and

(B) civilly or criminally liable except when disclosure constitutes a knowing violation of Section 63G-2-801.

(5) A minor may not be held in a detention facility, following a dispositional order of the court for nonsecure substitute care as defined in Section 62A-4a-101, or for community-based placement under Section 62A-7-101 for longer than 72 hours, excluding weekends and holidays. The period of detention may be extended by the court for one period of seven calendar days if:

(a) the Division of Juvenile Justice Services or another agency responsible for placement files a written petition with the court requesting the extension and setting forth good cause; and

(b) the court enters a written finding that it is in the best interests of both the minor and the community to extend the period of detention.

(6) The agency requesting an extension shall promptly notify the detention facility that a written petition has been filed.

(7) The court shall promptly notify the detention facility regarding its initial disposition and any ruling on a petition for an extension, whether granted or denied.

(8) (a) A child under 16 years of age may not be held in a jail, lockup, or other place for adult detention except as provided by Section 62A-7-201 or unless certified as an adult pursuant to Section 78A-6-703. The provisions of Section 62A-7-201 regarding confinement facilities apply to this Subsection (8).

(b) A child 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the detention facility for children may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including a jail or other place of confinement for adults.

However, a secure youth corrections facility is not an appropriate place of confinement for detention purposes under this section.

(9) A sheriff, warden, or other official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall immediately notify the juvenile court when a person who is or appears to be under 18 years of age is received at the facility and shall make arrangements for the transfer of the person to a detention facility, unless otherwise ordered by the juvenile court.

(10) This section does not apply to a minor who is brought to the adult facility under charges pursuant to Section 78A-6-701 or by order of the juvenile court to be held for criminal proceedings in the district court under Section 78A-6-702 or 78A-6-703.

(11) A minor held for criminal proceedings under Section 78A-6-701, 78A-6-702, or 78A-6-703 may be detained in a jail or other place of detention used for adults charged with crime.

(12) Provisions of law regarding bail are not applicable to minors detained or taken into custody under this chapter, except that bail may be allowed:

(a) if a minor who need not be detained lives outside this state; or

(b) when a minor who need not be detained comes within one of the classes in Subsection 78A-6-603(11).

(13) Section 76-8-418 is applicable to a child who willfully and intentionally commits an act against a jail or other place of confinement, including a Division of Juvenile Justice Services detention, shelter, or secure confinement facility which would be a third degree felony if committed by an adult.

Amended by Chapter 38, 2010 General Session

78A-6-114. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's cases heard separately from adult cases -- Minor or parents or custodian heard separately -- Continuance of hearing -- Consolidation of proceedings involving more than one minor.

(1) Hearings in minor's cases shall be held before the court without a jury and may be conducted in an informal manner.

(a) (i) In abuse, neglect, and dependency cases the court shall admit any person to a hearing, including a hearing under Section 78A-6-322, unless the court makes a finding upon the record that the person's presence at the hearing would:

(A) be detrimental to the best interest of a child who is a party to the proceeding;

(B) impair the fact-finding process; or

(C) be otherwise contrary to the interests of justice.

(ii) The court may exclude a person from a hearing under Subsection (1)(a)(i) on its own motion or by motion of a party to the proceeding.

(b) In delinquency cases the court shall admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present. The court shall exclude all other persons except as provided in Subsection (1)(c).

(c) In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court upon findings on the record for good cause if:

(i) the minor has been charged with an offense which would be a felony if committed by an adult; or

(ii) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult, and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult.

(d) The victim of any act charged in a petition or information involving an offense committed by a minor which if committed by an adult would be a felony or a class A or class B misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77, Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not apply to important juvenile justice hearings as defined in Section 77-38-2.

(e) A victim, upon request to appropriate juvenile court personnel, shall have the right to inspect and duplicate juvenile court legal records that have not been expunged concerning:

(i) the scheduling of any court hearings on the petition;

(ii) any findings made by the court; and

(iii) any sentence or decree imposed by the court.

(2) Minor's cases shall be heard separately from adult cases. The minor or the parents or custodian of a minor may be heard separately when considered necessary by the court. The hearing may be continued from time to time to a date specified by court order.

(3) When more than one child is involved in a home situation which may be found to constitute neglect or dependency, or when more than one minor is alleged to be involved in the same law violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-115. Hearings -- Record -- County attorney or district attorney responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of evidence.

(1) (a) A verbatim record of the proceedings shall be taken in all cases that might result in deprivation of custody as defined in this chapter. In all other cases a verbatim record shall also be made unless dispensed with by the court.

(b) (i) Notwithstanding any other provision, including Title 63G, Chapter 2, Government Records Access and Management Act, a record of a proceeding made under Subsection (1)(a) shall be released by the court to any person upon a finding on the record for good cause.

(ii) Following a petition for a record of a proceeding made under Subsection (1)(a), the court shall:

(A) provide notice to all subjects of the record that a request for release of the record has been made; and

(B) allow sufficient time for the subjects of the record to respond before making a finding on the petition.

(iii) A record of a proceeding may not be released under this Subsection (1)(b) if

the court's jurisdiction over the subjects of the proceeding ended more than 12 months prior to the request.

(iv) For purposes of this Subsection (1)(b):

(A) "record of a proceeding" does not include documentary materials of any type submitted to the court as part of the proceeding, including items submitted under Subsection (4)(a); and

(B) "subjects of the record" includes the child's guardian ad litem, the child's legal guardian, the Division of Child and Family Services, and any other party to the proceeding.

(2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a prosecution district, the district attorney shall represent the state in any proceeding in a minor's case.

(b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child and Family Services, and this chapter, relating to:

(i) protection or custody of an abused, neglected, or dependent child; and

(ii) petitions for termination of parental rights.

(c) The attorney general shall represent the Division of Child and Family Services in actions involving a minor who is not adjudicated as abused or neglected, but who is otherwise committed to the custody of that division by the juvenile court, and who is classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense. Nothing in this Subsection (2)(c) may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with the provisions of Subsection (2)(a).

(3) The board may adopt special rules of procedure to govern proceedings involving violations of traffic laws or ordinances, wildlife laws, and boating laws. However, proceedings involving offenses under Section 78A-6-606 are governed by that section regarding suspension of driving privileges.

(4) (a) For the purposes of determining proper disposition of the minor in dispositional hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and in hearings upon petitions for termination of parental rights, written reports and other material relating to the minor's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the person who wrote the report or prepared the material appear as a witness if the person is reasonably available.

(b) For the purpose of determining proper disposition of a minor alleged to be or adjudicated as abused, neglected, or dependent, dispositional reports prepared by the division under Section 78A-6-315 may be received in evidence and may be considered by the court along with other evidence. The court may require any person who participated in preparing the dispositional report to appear as a witness, if the person is reasonably available.

(5) (a) In an abuse, neglect, or dependency proceeding occurring after the commencement of a shelter hearing under Section 78A-6-306 or the filing of a petition under Section 78A-6-304, each party to the proceeding shall provide in writing to the other parties or their counsel any information which the party:

(i) plans to report to the court at the proceeding; or

(ii) could reasonably expect would be requested of the party by the court at the proceeding.

(b) The disclosure required under Subsection (5)(a) shall be made:

(i) for dispositional hearings under Sections 78A-6-311 and 78A-6-312, no less than five days before the proceeding;

(ii) for proceedings under Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, in accordance with Utah Rules of Civil Procedure; and

(iii) for all other proceedings, no less than five days before the proceeding.

(c) If a party to a proceeding obtains information after the deadline in Subsection (5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the party certifies to the court that the information was obtained after the deadline.

(d) Subsection (5)(a) does not apply to:

(i) pretrial hearings; and

(ii) the frequent, periodic review hearings held in a dependency drug court case to assess and promote the parent's progress in substance abuse treatment.

(6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court may, in its discretion, consider evidence of statements made by a child under eight years of age to a person in a trust relationship.

Amended by Chapter 34, 2010 General Session

78A-6-116. Minor's cases considered civil proceedings -- Adjudication of jurisdiction by juvenile court not conviction of crime -- Exceptions -- Minor not to be charged with crime -- Exception -- Traffic violation cases -- Abstracts to Department of Public Safety.

(1) Except as provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703, proceedings in a minor's case shall be regarded as civil proceedings with the court exercising equitable powers.

(2) An adjudication by a juvenile court that a minor is within its jurisdiction under Section 78A-6-103 is not considered a conviction of a crime, except in cases involving traffic violations. An adjudication may not operate to impose any civil disabilities upon the minor nor to disqualify the minor for any civil service or military service or appointment.

(3) A minor may not be charged with a crime or convicted in any court except as provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703, and in cases involving traffic violations. When a petition has been filed in the juvenile court, the minor may not later be subjected to criminal prosecution based on the same facts except as provided in Section 78A-6-702 or 78A-6-703.

(4) An adjudication by a juvenile court that a minor is within its jurisdiction under Section 78A-6-103 is considered a conviction for the purposes of determining the level of offense for which a minor may be charged and enhancing the level of an offense in the juvenile court. A prior adjudication may be used to enhance the level or degree of an offense committed by an adult only as otherwise specifically provided.

(5) Abstracts of court records for all adjudications of traffic violations shall be submitted to the Department of Public Safety as provided in Section 53-3-218.

(6) Information necessary to collect unpaid fines, fees, assessments, bail, or

restitution may be forwarded to employers, financial institutions, law enforcement, constables, the Office of Recovery Services, or other agencies for purposes of enforcing the order as provided in Section 78A-6-117.

Amended by Chapter 38, 2010 General Session

78A-6-117. Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court -- Obtaining DNA sample.

(1) (a) When a minor is found to come within the provisions of Section 78A-6-103, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within the provisions of Subsection 78A-6-103(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include:

(i) the specific offenses for which the minor was adjudicated; and

(ii) if available, if the victim:

(A) resides in the same school district as the minor; or

(B) attends the same school as the minor.

(2) Upon adjudication the court may make the following dispositions by court order:

(a) (i) The court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service as provided in Subsection (2)(m)(iii).

(ii) The court may place the minor in state supervision with the probation department of the court, under the legal custody of:

(A) the minor's parent or guardian;

(B) the Division of Juvenile Justice Services; or

(C) the Division of Child and Family Services.

(iii) If the court orders probation or state supervision, the court shall direct that notice of its order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iv) Any employee of the local law enforcement agency and the school that the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and

(B) civilly or criminally liable except when the disclosure constitutes a knowing violation of Section 63G-2-801.

(b) The court may place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision, but the juvenile court may not assume the function of developing foster home services.

(c) (i) The court may:

(A) vest legal custody of the minor in the Division of Child and Family Services, Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health; and

(B) order the Department of Human Services to provide dispositional recommendations and services.

(ii) For minors who may qualify for services from two or more divisions within the Department of Human Services, the court may vest legal custody with the department.

(iii) (A) A minor who is committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect is subject to the provisions of Title 78A, Chapter 6, Part 4, Minors in Custody on Grounds Other than Abuse or Neglect, and Title 62A, Chapter 4a, Part 2a, Minors in Custody on Grounds other than Abuse or Neglect.

(B) Before the court entering an order to place a minor in the custody of the Division of Child and Family Services on grounds other than abuse or neglect, the court shall provide the division with notice of the hearing no later than five days before the time specified for the hearing so the division may attend the hearing.

(C) Before committing a child to the custody of the Division of Child and Family Services, the court shall make a finding as to what reasonable efforts have been attempted to prevent the child's removal from the child's home.

(d) (i) The court may commit a minor to the Division of Juvenile Justice Services for secure confinement.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78A-6-103(1)(c) may not be committed to the Division of Juvenile Justice Services.

(e) The court may commit a minor, subject to the court retaining continuing jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice Services for observation and evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the request of the director of the Division of Juvenile Justice Services.

(f) (i) The court may commit a minor to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction over the minor. This commitment may be stayed or suspended upon conditions ordered by the court.

(ii) This Subsection (2)(f) applies only to a minor adjudicated for:

(A) an act which if committed by an adult would be a criminal offense; or

(B) contempt of court under Section 78A-6-1101.

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(h) The court may place a minor on a ranch or forestry camp, or similar facility for care and also for work, if possible, if the person, agency, or association operating the facility has been approved or has otherwise complied with all applicable state and local laws. A minor placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads, and on

other works on or off the grounds of the facility and may be paid wages, subject to the approval of and under conditions set by the court.

(i) (i) The court may order a minor to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section 78A-6-321 and impose fines in limited amounts.

(ii) The court may also require a minor to reimburse an individual, entity, or governmental agency who offered and paid a reward to a person or persons for providing information resulting in a court adjudication that the minor is within the jurisdiction of the juvenile court due to the commission of a criminal offense.

(iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs expended by any governmental entity for the return.

(j) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions.

(k) (i) The court may through its probation department encourage the development of employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i) and for other purposes considered desirable by the court.

(ii) Consistent with the order of the court, the probation officer may permit a minor found to be within the jurisdiction of the court to participate in a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

(l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in addition to any other disposition authorized by this section:

(A) restrain the minor from driving for periods of time the court considers necessary; and

(B) take possession of the minor's driver license.

(ii) The court may enter any other disposition under Subsection (2)(l)(i). However, the suspension of driving privileges for an offense under Section 78A-6-606 is governed only by Section 78A-6-606.

(m) (i) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(ii) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 32B-4-409 or Subsection 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(iii) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may order the minor to clean up graffiti created by the minor or any other

person at a time and place within the jurisdiction of the court. Compensatory service required under this section may be performed in the presence and under the direct supervision of the minor's parent or legal guardian. The parent or legal guardian shall report completion of the order to the court. The minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal costs as determined under Section 76-6-107, unless waived by the court for good cause. The court may also require the minor to perform other alternative forms of restitution or repair to the damaged property pursuant to Subsection 77-18-1(8).

(A) For a first adjudication, the court may require the minor to clean up graffiti for not less than eight hours.

(B) For a second adjudication, the court may require the minor to clean up graffiti for not less than 16 hours.

(C) For a third adjudication, the court may require the minor to clean up graffiti for not less than 24 hours.

(n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

(A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

(B) receive other special care.

(ii) For purposes of receiving the examination, treatment, or care described in Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

(iii) In determining whether to order the examination, treatment, or care described in Subsection (2)(n)(i), the court shall consider:

(A) the desires of the minor;

(B) if the minor is under the age of 18, the desires of the parents or guardian of the minor; and

(C) whether the potential benefits of the examination, treatment, or care outweigh the potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain function impairment, or emotional or physical harm resulting from the compulsory nature of the examination, treatment, or care.

(o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency in which legal custody of the minor is vested.

(ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of a child's parents.

(p) (i) In support of a decree under Section 78A-6-103, the court may order reasonable conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:

(A) parent-time by the parents or one parent;

(B) restrictions on the minor's associates;

(C) restrictions on the minor's occupation and other activities; and

(D) requirements to be observed by the parents or custodian.

(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or

probation time.

(q) The court may order the child to be committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(r) (i) The court may make an order committing a minor within the court's jurisdiction to the Utah State Developmental Center if the minor has an intellectual disability in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(r)(i).

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

(t) The court may make any other reasonable orders for the best interest of the minor or as required for the protection of the public, except that a child may not be committed to jail or prison.

(u) The court may combine the dispositions listed in this section if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their child. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(w) Except as provided in Subsection (2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the court. A new date shall be set upon each review.

(x) In reviewing foster home placements, special attention shall be given to making adoptable children available for adoption without delay.

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with an individual or relative of a child where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an order for child support on behalf of the child against the natural or adoptive parents of the child.

(ii) Orders under Subsection (2)(y)(i):

(A) shall remain in effect until the child reaches majority;

(B) are not subject to review under Section 78A-6-118; and

(C) may be modified by petition or motion as provided in Section 78A-6-1103.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.

(3) In addition to the dispositions described in Subsection (2), when a minor comes within the court's jurisdiction, the minor may be given a choice by the court to serve in the National Guard in lieu of other sanctions, provided:

(a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(b) the minor is not under the jurisdiction of the court for any act that:

(i) would be a felony if committed by an adult;

(ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(iii) was committed with a weapon; and

(c) the court retains jurisdiction over the minor under conditions set by the court and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

(4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by designated employees of the court or, if the minor is in the legal custody of the Division of Juvenile Justice Services, then by designated employees of the division under Subsection 53-10-404(5)(b).

(b) The responsible agency shall ensure that employees designated to collect the saliva DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA Specimen Restricted Account created in Section 53-10-407.

(d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section 78A-6-321.

Amended by Chapter 366, 2011 General Session

78A-6-118. Period of operation of judgment, decree, or order -- Rights and responsibilities of agency or individual granted legal custody.

(1) A judgment, order, or decree of the juvenile court does not operate after the minor becomes 21 years of age, except for:

(a) orders of commitment to the Utah State Developmental Center or to the custody of the Division of Substance Abuse and Mental Health;

(b) adoption orders under Subsection 78A-6-103(1);

(c) orders permanently terminating the rights of a parent, guardian, or custodian, and permanent orders of custody and guardianships; and

(d) unless terminated by the court, orders to pay any fine or restitution.

(2) (a) Except as provided in Part 3, Abuse, Neglect, and Dependency Proceedings, an order vesting legal custody or guardianship of a minor in an individual, agency, or institution may be for an indeterminate period. A review hearing shall be held, however, upon the expiration of 12 months, and, with regard to petitions filed by the Division of Child and Family Services, no less than once every six months thereafter. The individual, agency, or institution involved shall file the petition for that review hearing. The court may terminate the order, or after notice and hearing, continue the order if it finds continuation of the order necessary to safeguard the welfare of the minor or the public interest. The findings of the court and its reasons shall be entered with the continuation order or with the order denying continuation.

(b) Subsection (2)(a) does not apply to minors who are in the custody of the Division of Child and Family Services, and who are placed in foster care, a secure youth corrections facility, the Division of Substance Abuse and Mental Health, the Utah State

Developmental Center, or any agency licensed for child placements and adoptions, in cases where all parental rights of the natural parents have been terminated by the court under Part 5, Termination of Parental Rights Act, and custody of the minor has been granted to the agency for adoption or other permanent placement.

(3) (a) An agency granted legal custody may determine where and with whom the minor will live, provided that placement of the minor does not remove him from the state without court approval.

(b) An individual granted legal custody shall personally exercise the rights and responsibilities involved in legal custody, unless otherwise authorized by the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-119. Modification of order or decree -- Requirements for changing or terminating custody, probation, or protective supervision.

(1) The court may modify or set aside any order or decree made by it, however a modification of an order placing a minor on probation may not be made upon an alleged violation of the terms of probation unless there has been a hearing in accordance with the procedures in Section 78A-6-1103.

(2) Notice of the hearing shall be required in any case in which the effect of modifying or setting aside an order or decree may be to make any change in the minor's legal custody.

(3) (a) Notice of an order terminating probation or protective supervision of a child shall be given to the child's:

(i) parents;

(ii) guardian;

(iii) custodian; and

(iv) where appropriate, to the child.

(b) Notice of an order terminating probation or protective supervision of a minor who is at least 18 years of age shall be given to the minor.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-120. Continuing jurisdiction of juvenile court -- Period of and termination of jurisdiction -- Notice of discharge from custody of local mental health authority or Utah State Developmental Center -- Transfer of continuing jurisdiction to other district.

(1) Jurisdiction of a minor obtained by the court through adjudication under Section 78A-6-117 continues for purposes of this chapter until he becomes 21 years of age, unless terminated earlier. However, the court, subject to Section 78A-6-121, retains jurisdiction beyond the age of 21 of a person who has refused or failed to pay any fine or victim restitution ordered by the court, but only for the purpose of causing compliance with existing orders.

(2) (a) The continuing jurisdiction of the court terminates:

(i) upon order of the court;

(ii) upon commitment to a secure youth corrections facility; or

(iii) upon commencement of proceedings in adult cases under Section

78A-6-1001.

(b) The continuing jurisdiction of the court is not terminated by marriage.

(3) When a minor has been committed by the court to the physical custody of a local mental health authority or its designee or to the Utah State Developmental Center, the local mental health authority or its designee or the superintendent of the Utah State Developmental Center shall give the court written notice of its intention to discharge, release, or parole the minor not fewer than five days prior to the discharge, release, or parole.

(4) Jurisdiction over a minor on probation or under protective supervision, or of a minor who is otherwise under the continuing jurisdiction of the court, may be transferred by the court to the court of another district, if the receiving court consents, or upon direction of the chair of the Board of Juvenile Court Judges. The receiving court has the same powers with respect to the minor that it would have if the proceedings originated in that court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-121. Entry of judgment for fine or restitution -- Transfer for collection.

(1) If, prior to the entry of any order terminating jurisdiction of a juvenile, there remains any unpaid balance for any fine or restitution ordered by the court, the court shall record all pertinent information in the juvenile's file and transfer responsibility to collect all unpaid fines and restitution to the Office of State Debt Collection.

(2) Before transferring the responsibility to collect any past due fines, the court shall reduce the order to a judgment listing the Office of State Debt Collection as the judgment creditor.

(3) Before transferring the responsibility to collect any past due accounts receivable for restitution to a victim, the court shall reduce the restitution order to a judgment listing the victim, or the estate of the victim, as the judgment creditor.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-201. Judges of juvenile court -- Appointments -- Terms.

(1) Judges of the juvenile court shall be appointed initially to serve until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office of a judge of a juvenile court is six years and commences on the first Monday in January next following the date of election.

(2) A judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-202. Sessions of juvenile court.

(1) In each county, regular juvenile court sessions shall be held at a place designated by the judge or judges of the juvenile court district, with the approval of the board.

(2) Court sessions shall be held in each county when the presiding judge of the juvenile court directs, except that a judge of the district may hold court in any county within the district at any time, if required by the urgency of the case.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-203. Board of Juvenile Court Judges -- Composition -- Purpose.

(1) (a) The Judicial Council shall by rule establish a Board of Juvenile Court Judges.

(b) The board shall establish general policies for the operation of the juvenile courts and uniform rules and forms governing practice, consistent with the provisions of this chapter, the rules of the Judicial Council, and rules of the Supreme Court.

(c) The board may receive and expend any funds that may become available from the federal government or private sources to carry out any of the purposes of this chapter.

(i) The board may meet any federal requirements that are conditions precedent to receiving the funds.

(ii) The board may cooperate with the federal government in a program for training personnel employed or preparing for employment by the juvenile court and may receive and expend funds from federal or state sources or from private donations for these purposes.

(iii) Funds donated or paid to the juvenile court by private sources for the purpose of compensatory service programs shall be nonlapsing.

(iv) The board may:

(A) contract with public or nonprofit institutions of higher learning for the training of personnel;

(B) conduct short-term training courses of its own and hire experts on a temporary basis for this purpose; and

(C) cooperate with the Division of Child and Family Services and other state departments or agencies in personnel training programs.

(d) The board may contract, on behalf of the juvenile court, with the United States Forest Service or other agencies or departments of the federal government or with agencies or departments of other states for the care and placement of minors adjudicated under this chapter.

(e) The powers to contract and expend funds are subject to budgetary control and procedures as provided by law.

(2) Under the direction of the presiding officer of the council, the chair shall supervise the juvenile courts to ensure uniform adherence to law and to the rules and forms adopted by the Supreme Court and Judicial Council, and to promote the proper and efficient functioning of the juvenile courts.

(3) The judges of districts having more than one judge shall elect a presiding judge. In districts comprised of five or more judges and court commissioners, the presiding judge shall receive an additional $1,000 per annum as compensation.

(4) Consistent with policies of the Judicial Council, the presiding judge shall:

(a) implement policies of the Judicial Council;

(b) exercise powers and perform administrative duties as authorized by the

Judicial Council;

(c) manage the judicial business of the district; and

(d) call and preside over meetings of judges of the district.

Amended by Chapter 356, 2009 General Session

78A-6-204. Administrator of the juvenile court -- Appointment -- Qualifications -- Powers and duties.

(1) With the approval of the board, the state court administrator shall appoint a chief administrative officer of the juvenile court.

(2) The chief administrative officer shall be selected on the basis of professional ability and experience in the field of public administration and shall possess an understanding of court procedures, as well as the nature and significance of probation services and other court services.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-205. District court executives -- Selection -- Duties.

(1) The chief administrative officer of the juvenile court, with the approval of the judge of each district or the presiding judge of multiple judge districts, shall appoint a court executive for each district. The court executive serves at the pleasure of the chief administrative officer.

(2) The court executive shall:

(a) appoint a clerk of the court, deputy court clerks, probation officers, and other persons as required to carry out the work of the court;

(b) supervise the work of all nonjudicial court staff of the district; and

(c) serve as administrative officer of the district.

(3) The clerk shall keep a record of court proceedings and may issue all process and notice required.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-206. Juvenile court employees -- Salaries -- State courts personnel system -- Exemptions and discharge.

(1) All employees except judges and commissioners shall be selected, promoted, and discharged through the state courts personnel system for the juvenile court, under the direction and rules of the Board of Juvenile Court Judges and the Judicial Council.

(2) An employee under the state courts personnel system may not be discharged except for cause and after a hearing before the appointing authority, with appeal as provided by the state courts personnel system. An employee may be suspended pending the hearing and appeal.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-207. Volunteers.

The names of volunteers serving under Section 78A-6-902 shall be stated in the court records of the cases they work with. Volunteers of record with the court are considered to be volunteers to the juvenile court and are volunteers under Title 67, Chapter 20, Volunteer Government Workers Act.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-208. Mental health evaluations -- Duty of administrator.

(1) The administrator of the juvenile court, with the approval of the board, and the executive director of the Department of Health, and director of the Division of Substance Abuse and Mental Health shall from time to time agree upon an appropriate plan:

(a) for obtaining mental health services and health services for the juvenile court from the state and local health departments and programs of mental health; and

(b) for assistance by the Department of Health and the Division of Substance Abuse and Mental Health in securing for the juvenile court special health, mental health, juvenile competency evaluations, and related services including community mental health services not already available from the Department of Health and the Division of Substance Abuse and Mental Health.

(2) The Legislature may provide an appropriation to the Department of Health and the Division of Substance Abuse and Mental Health for this purpose.

Amended by Chapter 316, 2012 General Session

78A-6-209. Court records -- Inspection.

(1) The court and the probation department shall keep records as required by the board and the presiding judge.

(2) Court records shall be open to inspection by:

(a) the parents or guardian of a child, a minor who is at least 18 years of age, other parties in the case, the attorneys, and agencies to which custody of a minor has been transferred;

(b) for information relating to adult offenders alleged to have committed a sexual offense, a felony or class A misdemeanor drug offense, or an offense against the person under Title 76, Chapter 5, Offenses Against the Person, the State Office of Education for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, with the understanding that the office must provide the individual with an opportunity to respond to any information gathered from its inspection of the records before it makes a decision concerning licensure or employment;

(c) the Criminal Investigations and Technical Services Division, established in Section 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm and establishing good character for issuance of a concealed firearm permit as provided in Section 53-5-704;

(d) the Division of Child and Family Services for the purpose of Child Protective Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and administrative hearings in accordance with Section 62A-4a-1009;

(e) for information related to a juvenile offender who has committed a sexual offense, a felony, or an offense that if committed by an adult would be a misdemeanor, the Department of Health for the purpose of evaluating under the provisions of Subsection 26-39-404(3) whether a licensee should be permitted to obtain or retain a license to provide child care, with the understanding that the department must provide the individual who committed the offense with an opportunity to respond to any information gathered from its inspection of records before it makes a decision concerning licensure; and

(f) for information related to a juvenile offender who has committed a sexual offense, a felony, or an offense that if committed by an adult would be a misdemeanor, the Department of Health to determine whether an individual meets the background screening requirements of Title 26, Chapter 21, Part 2, Clearance for Direct Patient Access, with the understanding that the department must provide the individual who committed the offense an opportunity to respond to any information gathered from its inspection of records before it makes a decision under that part.

(3) With the consent of the judge, court records may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies.

(4) If a petition is filed charging a minor 14 years of age or older with an offense that would be a felony if committed by an adult, the court shall make available to any person upon request the petition, any adjudication or disposition orders, and the delinquency history summary of the minor charged unless the records are closed by the court upon findings on the record for good cause.

(5) Probation officers' records and reports of social and clinical studies are not open to inspection, except by consent of the court, given under rules adopted by the board.

(6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency history summary of any person charged as an adult with a felony offense shall be made available to any person upon request.

(b) This provision does not apply to records that have been destroyed or expunged in accordance with court rules.

(c) The court may charge a reasonable fee to cover the costs associated with retrieving a requested record that has been archived.

Amended by Chapter 328, 2012 General Session

78A-6-210. Fines -- Fees -- Deposit with state treasurer -- Restricted account.

(1) There is created within the General Fund a restricted account known as the "Nonjudicial Adjustment Account."

(2) (a) The account shall be funded from the financial penalty established under Subsection 78A-6-602(2)(d)(i).

(b) The court shall deposit all money collected as a result of penalties assessed as part of the nonjudicial adjustment of a case in the account.

(c) The account shall be used to pay the expenses of juvenile compensatory service, victim restitution, and diversion programs.

(3) (a) Except under Subsection (3)(b) and as otherwise provided by law, all fines, fees, penalties, and forfeitures imposed and collected by the juvenile court shall be paid to the state treasurer for deposit in the General Fund.

(b) Not more than 50% of any fine or forfeiture collected may be paid to a state rehabilitative employment program for delinquent minors that provides for employment of the minor in the county of the minor's residence if:

(i) reimbursement for the minor's labor is paid to the victim of the minor's delinquent behavior;

(ii) the amount earned and paid is set by court order;

(iii) the minor is not paid more than the hourly minimum wage; and

(iv) no payments to victims are made without the minor's involvement in a rehabilitative work program.

(c) Fines withheld under Subsection (3)(b) and any private contributions to the rehabilitative employment program are accounted for separately and are subject to audit at any time by the state auditor.

(d) Funds withheld under Subsection (3)(b) and private contributions are nonlapsing. The Board of Juvenile Court Judges shall establish policies for the use of the funds described in this subsection.

(4) No fee may be charged by any state or local public officer for the service of process in any proceedings initiated by a public agency.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-211. Courtrooms -- Physical facilities.

(1) Suitable courtrooms and office space in each county shall be provided or made available to the court by the county for the hearing of cases except in counties where the state has provided courtrooms and offices as needed.

(2) Equipment and supplies for the use of the judges, officers, and employees of the court and the cost of maintaining the juvenile courts shall be paid from the General Fund or other funds for those purposes.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-301. Definitions.

As used in this part:

(1) "Custody" means the custody of a minor in the Division of Child and Family Services as of the date of disposition.

(2) "Protective custody" means the shelter of a child by the Division of Child and Family Services from the time the child is removed from home until the earlier of:

(a) the shelter hearing; or

(b) the child's return home.

(3) "Temporary custody" means the custody of a child in the Division of Child and Family Services from the date of the shelter hearing until disposition.

Enacted by Chapter 3, 2008 General Session

78A-6-302. Court-ordered protective custody of a child following petition filing -- Grounds.

(1) After a petition has been filed under Section 78A-6-304, if the child who is the subject of the petition is not in the protective custody of the division, a court may order that the child be removed from the child's home or otherwise taken into protective custody if the court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:

(a) (i) there is an imminent danger to the physical health or safety of the child; and

(ii) the child's physical health or safety may not be protected without removing the child from the custody of the child's parent or guardian;

(b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct that causes the child to suffer emotional damage; and

(ii) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;

(c) the child or another child residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a parent or guardian, a member of the parent's or guardian's household, or other person known to the parent or guardian;

(d) the parent or guardian is unwilling to have physical custody of the child;

(e) the child is abandoned or left without any provision for the child's support;

(f) a parent or guardian who has been incarcerated or institutionalized has not arranged or cannot arrange for safe and appropriate care for the child;

(g) (i) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;

(ii) the whereabouts of the parent or guardian are unknown; and

(iii) reasonable efforts to locate the parent or guardian are unsuccessful;

(h) the child is in immediate need of medical care;

(i) (i) a parent's or guardian's actions, omissions, or habitual action create an environment that poses a threat to the child's health or safety; or

(ii) a parent's or guardian's action in leaving a child unattended would reasonably pose a threat to the child's health or safety;

(j) the child or another child residing in the same household has been neglected;

(k) an infant has been abandoned, as defined in Section 78A-6-316;

(l) (i) the parent or guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(ii) any clandestine laboratory operation was located in the residence or on the property where the child resided; or

(m) the child's welfare is otherwise endangered.

(2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency occurs involving the same substantiated abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of the child's parent.

(b) For purposes of Subsection (1)(c):

(i) another child residing in the same household may not be removed from the home unless that child is considered to be at substantial risk of being physically abused, sexually abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

(ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse, or sexual exploitation by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the child, after having received the notice, by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically abused, sexually abused, or sexually exploited.

(3) In the absence of one of the factors described in Subsection (1), a court may not remove a child from the parent's or guardian's custody on the basis of:

(a) educational neglect, truancy, or failure to comply with a court order to attend school;

(b) mental illness or poverty of the parent or guardian; or

(c) disability of the parent or guardian, as defined in Section 57-21-2.

(4) A child removed from the custody of the child's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court proceedings unless the child is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(5) This section does not preclude removal of a child from the child's home without a warrant or court order under Section 62A-4a-202.1.

(6) (a) Except as provided in Subsection (6)(b), a court or the Division of Child and Family Services may not remove a child from the custody of the child's parent or guardian on the sole or primary basis that the parent or guardian refuses to consent to:

(i) the administration of a psychotropic medication to a child;

(ii) a psychiatric, psychological, or behavioral treatment for a child; or

(iii) a psychiatric or behavioral health evaluation of a child.

(b) Notwithstanding Subsection (6)(a), a court or the Division of Child and Family Services may remove a child under conditions that would otherwise be prohibited under Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a serious, imminent risk to the child's physical safety or the physical safety of others.

Amended by Chapter 293, 2012 General Session

78A-6-303. Rules of procedure -- Ex parte communications.

(1) The Utah Rules of Civil Procedure and the Utah Rules of Juvenile Procedure apply to abuse, neglect, and dependency proceedings unless the provisions of this part specify otherwise.

(2) Any unauthorized ex parte communication concerning a pending case between a judge and a party to an abuse, neglect, or dependency proceeding shall be recorded for subsequent review, if necessary, by the Judicial Conduct Commission.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-304. Petition filed.

(1) For purposes of this section, "petition" means a petition to commence proceedings in a juvenile court alleging that a child is:

(a) abused;

(b) neglected; or

(c) dependent.

(2) (a) Subject to Subsection (2)(b), any interested person may file a petition.

(b) A person described in Subsection (2)(a) shall make a referral with the division before the person files a petition.

(3) If the child who is the subject of a petition is removed from the child's home by the division, the petition shall be filed on or before the date of the initial shelter hearing described in Section 78A-6-306.

(4) The petition shall be verified, and contain all of the following:

(a) the name, age, and address, if any, of the child upon whose behalf the petition is brought;

(b) the names and addresses, if known to the petitioner, of both parents and any guardian of the child;

(c) a concise statement of facts, separately stated, to support the conclusion that the child upon whose behalf the petition is being brought is abused, neglected, or dependent; and

(d) a statement regarding whether the child is in protective custody, and if so, the date and precise time the child was taken into protective custody.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-305. Opportunity for a child to testify or address the court.

(1) For purposes of this section, "postadjudication hearing" means:

(a) a disposition hearing;

(b) a permanency hearing; or

(c) a review hearing, except a drug court review hearing.

(2) A child shall be present at any postadjudication hearing in a case relating to the abuse, neglect, or dependency of the child, unless the court determines that:

(a) requiring the child to be present at the postadjudication hearing would be detrimental to the child, or impractical; or

(b) the child is not sufficiently mature to articulate the child's wishes in relation to the hearing.

(3) A court may, in the court's discretion, order that a child described in Subsection (2) be present at a hearing that is not a postadjudication hearing.

(4) (a) Except as provided in Subsection (4)(b), at any hearing in a case relating to the abuse, neglect, or dependency of a child, when the child is present at the hearing, the court shall:

(i) ask the child whether the child desires the opportunity to address the court or testify; and

(ii) if the child desires an opportunity to address the court or testify, allow the child to address the court or testify.

(b) Subsection (4)(a) does not apply if the court determines that:

(i) it would be detrimental to the child to comply with Subsection (4)(a); or

(ii) the child is not sufficiently mature to articulate the child's wishes in relation to the hearing.

(c) Subject to applicable court rules, the court may allow the child to address the court in camera.

(5) Nothing in this section prohibits a child from being present at a hearing that the child is not required to be at by this section or by court order, unless the court orders otherwise.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-306. Shelter hearing.

(1) A shelter hearing shall be held within 72 hours excluding weekends and holidays after any one or all of the following occur:

(a) removal of the child from the child's home by the division;

(b) placement of the child in the protective custody of the division;

(c) emergency placement under Subsection 62A-4a-202.1(4);

(d) as an alternative to removal of the child, a parent enters a domestic violence shelter at the request of the division; or

(e) a "Motion for Expedited Placement in Temporary Custody" is filed under Subsection 78A-6-106(4).

(2) Upon the occurrence of any of the circumstances described in Subsections (1)(a) through (e), the division shall issue a notice that contains all of the following:

(a) the name and address of the person to whom the notice is directed;

(b) the date, time, and place of the shelter hearing;

(c) the name of the child on whose behalf a petition is being brought;

(d) a concise statement regarding:

(i) the reasons for removal or other action of the division under Subsection (1); and

(ii) the allegations and code sections under which the proceeding has been instituted;

(e) a statement that the parent or guardian to whom notice is given, and the child, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided in accordance with the provisions of Section 78A-6-1111; and

(f) a statement that the parent or guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial ability of the parent or guardian.

(3) The notice described in Subsection (2) shall be personally served as soon as possible, but no later than one business day after removal of the child from the child's home, or the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection 78A-6-106(4), on:

(a) the appropriate guardian ad litem; and

(b) both parents and any guardian of the child, unless the parents or guardians

cannot be located.

(4) The following persons shall be present at the shelter hearing:

(a) the child, unless it would be detrimental for the child;

(b) the child's parents or guardian, unless the parents or guardian cannot be located, or fail to appear in response to the notice;

(c) counsel for the parents, if one is requested;

(d) the child's guardian ad litem;

(e) the caseworker from the division who is assigned to the case; and

(f) the attorney from the attorney general's office who is representing the division.

(5) (a) At the shelter hearing, the court shall:

(i) provide an opportunity to provide relevant testimony to:

(A) the child's parent or guardian, if present; and

(B) any other person having relevant knowledge; and

(ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.

(b) The court:

(i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile Procedure;

(ii) shall hear relevant evidence presented by the child, the child's parent or guardian, the requesting party, or their counsel; and

(iii) may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.

(6) If the child is in the protective custody of the division, the division shall report to the court:

(a) the reason why the child was removed from the parent's or guardian's custody;

(b) any services provided to the child and the child's family in an effort to prevent removal;

(c) the need, if any, for continued shelter;

(d) the available services that could facilitate the return of the child to the custody of the child's parent or guardian; and

(e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the child or friends of the child's parents may be able and willing to accept temporary placement of the child.

(7) The court shall consider all relevant evidence provided by persons or entities authorized to present relevant evidence pursuant to this section.

(8) (a) If necessary to protect the child, preserve the rights of a party, or for other good cause shown, the court may grant no more than one continuance, not to exceed five judicial days.

(b) A court shall honor, as nearly as practicable, the request by a parent or guardian for a continuance under Subsection (8)(a).

(9) (a) If the child is in the protective custody of the division, the court shall order that the child be released from the protective custody of the division unless it finds, by a preponderance of the evidence, that any one of the following exist:

(i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical health or safety of the child and the child's physical health or safety may not be

protected without removing the child from the custody of the child's parent;

(ii) (A) the child is suffering emotional damage; and

(B) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent;

(iii) there is a substantial risk that the child will suffer abuse or neglect if the child is not removed from the custody of the child's parents;

(iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited by a:

(A) parent;

(B) member of the parent's household; or

(C) person known to the parent;

(v) the parent is unwilling to have physical custody of the child;

(vi) the child is without any provision for the child's support;

(vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the child;

(viii) (A) a relative or other adult custodian with whom the child is left by the parent is unwilling or unable to provide care or support for the child;

(B) the whereabouts of the parent are unknown; and

(C) reasonable efforts to locate the parent are unsuccessful;

(ix) the child is in urgent need of medical care;

(x) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety;

(xi) the child or a minor residing in the same household has been neglected;

(xii) the parent, or an adult residing in the same household as the parent, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation was located in the residence or on the property where the child resided; or

(xiii) the child's welfare is substantially endangered.

(b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is established if:

(A) a court previously adjudicated that the child suffered abuse, neglect, or dependency involving the parent; and

(B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

(ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly allowed the child to be in the physical care of a person after the parent received actual notice that the person physically abused, sexually abused, or sexually exploited the child, that fact constitutes prima facie evidence that there is a substantial risk that the child will be physically abused, sexually abused, or sexually exploited.

(10) (a) (i) The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from the child's home and whether there are available services that would prevent the need for continued removal.

(ii) If the court finds that the child can be safely returned to the custody of the

child's parent or guardian through the provision of those services, the court shall place the child with the child's parent or guardian and order that those services be provided by the division.

(b) In making the determination described in Subsection (10)(a), and in ordering and providing services, the child's health, safety, and welfare shall be the paramount concern, in accordance with federal law.

(11) Where the division's first contact with the family occurred during an emergency situation in which the child could not safely remain at home, the court shall make a finding that any lack of preplacement preventive efforts was appropriate.

(12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to the child's home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

(13) The court may not order continued removal of a child solely on the basis of educational neglect as described in Subsection 78A-6-105(25)(b) truancy, or failure to comply with a court order to attend school.

(14) (a) Whenever a court orders continued removal of a child under this section, the court shall state the facts on which that decision is based.

(b) If no continued removal is ordered and the child is returned home, the court shall state the facts on which that decision is based.

(15) If the court finds that continued removal and temporary custody are necessary for the protection of a child because harm may result to the child if the child were returned home, the court shall order continued removal regardless of:

(a) any error in the initial removal of the child;

(b) the failure of a party to comply with notice provisions; or

(c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Amended by Chapter 293, 2012 General Session

78A-6-307. Shelter hearing -- Placement -- DCFS custody.

(1) As used in this section:

(a) (i) "Natural parent," notwithstanding the provisions of Section 78A-6-105, means:

(A) a biological or adoptive mother;

(B) an adoptive father; or

(C) a biological father who:

(I) was married to the child's biological mother at the time the child was conceived or born; or

(II) has strictly complied with the provisions of Sections 78B-6-120 through 78B-6-122, prior to removal of the child or voluntary surrender of the child by the custodial parent.

(ii) The definition of "natural parent" described in Subsection (1)(a)(i) applies regardless of whether the child has been or will be placed with adoptive parents or whether adoption has been or will be considered as a long term goal for the child.

(b) "Relative" means:

(i) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling of a child; and

(ii) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that statute.

(2) (a) At the shelter hearing, when the court orders that a child be removed from the custody of the child's parent in accordance with the requirements of Section 78A-6-306, the court shall first determine whether there is another natural parent with whom the child was not residing at the time the events or conditions that brought the child within the court's jurisdiction occurred, who desires to assume custody of the child.

(b) If another natural parent requests custody under Subsection (2)(a), the court shall place the child with that parent unless it finds that the placement would be unsafe or otherwise detrimental to the child.

(c) The provisions of this Subsection (2) are limited by the provisions of Subsection (18)(b).

(d) (i) The court shall make a specific finding regarding the fitness of the parent described in Subsection (2)(b) to assume custody, and the safety and appropriateness of the placement.

(ii) The court shall, at a minimum, order the division to visit the parent's home, comply with the criminal background check provisions described in Section 78A-6-308, and check the division's management information system for any previous reports of abuse or neglect received by the division regarding the parent at issue.

(iii) The court may order the division to conduct any further investigation regarding the safety and appropriateness of the placement.

(iv) The division shall report its findings in writing to the court.

(v) The court may place the child in the temporary custody of the division, pending its determination regarding that placement.

(3) If the court orders placement with a parent under Subsection(2):

(a) the child and the parent are under the continuing jurisdiction of the court;

(b) the court may order:

(i) that the parent assume custody subject to the supervision of the court; and

(ii) that services be provided to the parent from whose custody the child was removed, the parent who has assumed custody, or both; and

(c) the court shall order reasonable parent-time with the parent from whose custody the child was removed, unless parent-time is not in the best interest of the child.

(4) The court shall periodically review an order described in Subsection (3) to determine whether:

(a) placement with the parent continues to be in the child's best interest;

(b) the child should be returned to the original custodial parent;

(c) the child should be placed in the custody of a relative, pursuant to Subsections (7) through (12); or

(d) the child should be placed in the custody of the division.

(5) The time limitations described in Section 78A-6-312 with regard to reunification efforts, apply to children placed with a previously noncustodial parent in

accordance with Subsection (2).

(6) Legal custody of the child is not affected by an order entered under Subsection (2) or (3). In order to affect a previous court order regarding legal custody, the party must petition that court for modification of the order.

(7) If, at the time of the shelter hearing, a child is removed from the custody of the child's parent and is not placed in the custody of the child's other parent, the court:

(a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e), there is a relative of the child or a friend of a parent of the child who is able and willing to care for the child;

(b) may order the division to conduct a reasonable search to determine whether, subject to Subsections (18)(c) through (e), there are relatives of the child or friends of a parent of the child who are willing and appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child;

(c) shall order the parents to cooperate with the division, within five working days, to, subject to Subsections (18)(c) through (e), provide information regarding relatives of the child or friends who may be able and willing to care for the child; and

(d) may order that the child be placed in the custody of the division pending the determination under Subsection (7)(a).

(8) This section may not be construed as a guarantee that an identified relative or friend will receive custody of the child.

(9) Subject to Subsections (18)(c) through (e), preferential consideration shall be given to a relative's or a friend's request for placement of the child, if it is in the best interest of the child, and the provisions of this section are satisfied.

(10) (a) If a willing relative or friend is identified under Subsection (7)(a), the court shall make a specific finding regarding:

(i) the fitness of that relative or friend as a placement for the child; and

(ii) the safety and appropriateness of placement with that relative or friend.

(b) In order to be considered a "willing relative or friend" under this section, the relative or friend shall be willing to cooperate with the child's permanency goal.

(11) (a) In making the finding described in Subsection (10)(a), the court shall, at a minimum, order the division to:

(i) if the child may be placed with a relative of the child, conduct a background check that includes:

(A) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification background check of the relative;

(B) a completed search, relating to the relative, of the Management Information System described in Section 62A-4a-1003; and

(C) a background check that complies with the criminal background check provisions described in Section 78A-6-308, of each nonrelative, as defined in Subsection 62A-4a-209(1)(a), of the child who resides in the household where the child may be placed;

(ii) if the child will be placed with a noncustodial parent of the child, complete a background check that includes:

(A) the background check requirements applicable to an emergency placement with a noncustodial parent that are described in Subsections 62A-4a-209(5) and (7);

(B) a completed search, relating to the noncustodial parent of the child, of the Management Information System described in Section 62A-4a-1003; and

(C) a background check that complies with the criminal background check provisions described in Section 78A-6-308, of each nonrelative, as defined in Subsection 62A-4a-209(1)(a), of the child who resides in the household where the child may be placed;

(iii) if the child may be placed with an individual other than a noncustodial parent or a relative of the child, conduct a criminal background check of the individual, and each adult that resides in the household where the child may be placed, that complies with the criminal background check provisions described in Section 78A-6-308;

(iv) visit the relative's or friend's home;

(v) check the division's management information system for any previous reports of abuse or neglect regarding the relative or friend at issue;

(vi) report the division's findings in writing to the court; and

(vii) provide sufficient information so that the court may determine whether:

(A) the relative or friend has any history of abusive or neglectful behavior toward other children that may indicate or present a danger to this child;

(B) the child is comfortable with the relative or friend;

(C) the relative or friend recognizes the parent's history of abuse and is committed to protect the child;

(D) the relative or friend is strong enough to resist inappropriate requests by the parent for access to the child, in accordance with court orders;

(E) the relative or friend is committed to caring for the child as long as necessary; and

(F) the relative or friend can provide a secure and stable environment for the child.

(b) The division may determine to conduct, or the court may order the division to conduct, any further investigation regarding the safety and appropriateness of the placement.

(c) The division shall complete and file its assessment regarding placement with a relative or friend as soon as practicable, in an effort to facilitate placement of the child with a relative or friend.

(12) (a) The court may place a child described in Subsection (2)(a) in the temporary custody of the division, pending the division's investigation pursuant to Subsections (10) and (11), and the court's determination regarding the appropriateness of that placement.

(b) The court shall ultimately base its determination regarding the appropriateness of a placement with a relative or friend on the best interest of the child.

(13) When the court awards custody and guardianship of a child with a relative or friend:

(a) the court shall order that:

(i) the relative or friend assume custody, subject to the continuing supervision of the court; and

(ii) any necessary services be provided to the child and the relative or friend;

(b) the child and any relative or friend with whom the child is placed are under

the continuing jurisdiction of the court;

(c) the court may enter any order that it considers necessary for the protection and best interest of the child;

(d) the court shall provide for reasonable parent-time with the parent or parents from whose custody the child was removed, unless parent-time is not in the best interest of the child; and

(e) the court shall conduct a periodic review no less often than every six months, to determine whether:

(i) placement with the relative or friend continues to be in the child's best interest;

(ii) the child should be returned home; or

(iii) the child should be placed in the custody of the division.

(14) No later than 12 months after placement with a relative or friend, the court shall schedule a hearing for the purpose of entering a permanent order in accordance with the best interest of the child.

(15) The time limitations described in Section 78A-6-312, with regard to reunification efforts, apply to children placed with a relative or friend pursuant to Subsection (7).

(16) (a) If the court awards custody of a child to the division, and the division places the child with a relative, the division shall:

(i) conduct a criminal background check of the relative that complies with the criminal background check provisions described in Section 78A-6-308; and

(ii) if the results of the criminal background check described in Subsection (16)(a)(i) would prohibit the relative from having direct access to the child under Section 62A-2-120, the division shall:

(A) take the child into physical custody; and

(B) within three days, excluding weekends and holidays, after taking the child into physical custody under Subsection (16)(a)(ii)(A), give written notice to the court, and all parties to the proceedings, of the division's action.

(b) Nothing in Subsection (16)(a) prohibits the division from placing a child with a relative, pending the results of the background check described in Subsection (16)(a) on the relative.

(17) When the court orders that a child be removed from the custody of the child's parent and does not award custody and guardianship to another parent, relative, or friend under this section, the court shall order that the child be placed in the temporary custody of the Division of Child and Family Services, to proceed to adjudication and disposition and to be provided with care and services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

(18) (a) Any preferential consideration that a relative or friend is initially granted pursuant to Subsection (9) expires 120 days from the date of the shelter hearing. After that time period has expired, a relative or friend who has not obtained custody or asserted an interest in a child, may not be granted preferential consideration by the division or the court.

(b) When the time period described in Subsection (18)(a) has expired, the preferential consideration which is initially granted to a natural parent in accordance with Subsection (2), is limited. After that time the court shall base its custody decision on the

best interest of the child.

(c) Prior to the expiration of the 120-day period described in Subsection (18)(a), the following order of preference shall be applied when determining the person with whom a child will be placed, provided that the person is willing, and has the ability, to care for the child:

(i) a noncustodial parent of the child;

(ii) a relative of the child;

(iii) subject to Subsection (18)(d), a friend of a parent of the child, if the friend is a licensed foster parent; and

(iv) other placements that are consistent with the requirements of law.

(d) In determining whether a friend is a willing and appropriate placement for a child, neither the court, nor the division, is required to consider more than one friend designated by each parent of the child.

(e) If a parent of the child is not able to designate a friend who is a licensed foster parent for placement of the child, but is able to identify a friend who is willing to become licensed as a foster parent:

(i) the department shall fully cooperate to expedite the licensing process for the friend; and

(ii) if the friend becomes licensed as a foster parent within the time frame described in Subsection (18)(a), the court shall determine whether it is in the best interests of the child to place the child with the friend.

(19) If, following the shelter hearing, the child is placed with a person who is not a parent of the child, a relative of the child, a friend of a parent of the child, or a former foster parent of the child, priority shall be given to a foster placement with a man and a woman who are married to each other, unless it is in the best interests of the child to place the child with a single foster parent.

(20) In determining the placement of a child, neither the court, nor the division, may take into account, or discriminate against, the religion of a person with whom the child may be placed, unless the purpose of taking religion into account is to place the child with a person or family of the same religion as the child.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 17, 2008 General Session

78A-6-307.5. Post-shelter hearing placement of a child who is in division custody.

(1) If the court awards custody of a child to the division under Section 78A-6-307, or as otherwise permitted by law, the division shall determine ongoing placement of the child.

(2) In placing a child under Subsection (1), the division:

(a) except as provided in Subsections (2)(b) and (d), shall comply with the applicable background check provisions described in Section 78A-6-307;

(b) is not required to receive approval from the court prior to making the placement;

(c) shall, within three days, excluding weekends and holidays, after making the placement, give written notice to the court, and all parties to the proceedings, that the

placement has been made; and

(d) may place the child with a noncustodial parent or relative of the child, using the same criteria established for an emergency placement under Section 62A-4a-209, pending the results of:

(i) the background check described in Subsection 78A-6-307(16)(a); and

(ii) evaluation with the noncustodial parent or relative to determine the noncustodial parent's or relative's capacity to provide ongoing care to the child.

Enacted by Chapter 17, 2008 General Session

78A-6-308. Criminal background checks necessary prior to out-of-home placement.

(1) Subject to Subsection (3), upon ordering removal of a child from the custody of the child's parent and placing that child in the custody of the Division of Child and Family Services, prior to the division's placement of that child in out-of-home care, the court shall require the completion of a nonfingerprint-based background check by the Utah Bureau of Criminal Identification regarding the proposed placement.

(2) (a) Except as provided in Subsection (4), the division and the Office of Guardian ad Litem may request, or the court upon the court's own motion may order, the Department of Public Safety to conduct a complete Federal Bureau of Investigation criminal background check through the national criminal history system (NCIC).

(b) Except as provided in Subsection (4), upon request by the division or the Office of Guardian ad Litem, or upon the court's order, persons subject to the requirements of Subsection (1) shall submit fingerprints and shall be subject to an FBI fingerprint background check. The child may be temporarily placed, pending the outcome of that background check.

(c) The cost of those investigations shall be borne by whoever is to receive placement of the child, except that the Division of Child and Family Services may pay all or part of the cost of those investigations.

(3) Except as provided in Subsection (5), a child who is in the legal custody of the state may not be placed with a prospective foster parent or a prospective adoptive parent, unless, before the child is placed with the prospective foster parent or the prospective adoptive parent:

(a) a fingerprint based FBI national criminal history records check is conducted on the prospective foster parent or prospective adoptive parent and any other adult residing in the household;

(b) the Department of Human Services conducts a check of the abuse and neglect registry in each state where the prospective foster parent or prospective adoptive parent resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of a severe type of abuse or neglect as defined in Section 62A-4a-1002;

(c) the Department of Human Services conducts a check of the abuse and neglect registry of each state where each adult living in the home of the prospective foster parent or prospective adoptive parent described in Subsection (3)(b) resided in

the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of a severe type of abuse or neglect as defined in Section 62A-4a-1002; and

(d) each person required to undergo a background check described in this Subsection (3) passes the background check, pursuant to the provisions of Section 62A-2-120.

(4) Subsections (2)(a) and (b) do not apply to a child who is placed with a noncustodial parent or relative under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, unless the court finds that compliance with Subsection (2)(a) or (b) is necessary to ensure the safety of the child.

(5) The requirements under Subsection (3) do not apply to the extent that:

(a) federal law or rule permits otherwise; or

(b) the requirements would prohibit the division or a court from placing a child with:

(i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

(ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending completion of the background check described in Subsection (3).

Amended by Chapter 293, 2012 General Session

78A-6-309. Pretrial and adjudication hearing -- Time deadlines.

(1) Upon the filing of a petition, the clerk of the court shall set the pretrial hearing on the petition within 15 calendar days from the later of:

(a) the date of the shelter hearing; or

(b) the filing of the petition.

(2) The pretrial may be continued upon motion of any party, for good cause shown, but the final adjudication hearing shall be held no later than 60 calendar days from the later of:

(a) the date of the shelter hearing; or

(b) the filing of the petition.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-310. Notice of adjudication hearing.

(1) Upon the filing of a petition pursuant to Section 78A-6-304, the petitioner shall cause the petition and notice to be served on:

(a) the guardian ad litem;

(b) both parents and any guardian of the child; and

(c) the child's foster parents.

(2) The notice shall contain all of the following:

(a) the name and address of the person to whom the notice is directed;

(b) the date, time, and place of the hearing on the petition;

(c) the name of the child on whose behalf the petition has been brought;

(d) a statement that the parent or guardian to whom notice is given, and the child, are entitled to have an attorney present at the hearing on the petition, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided; and

(e) a statement that the parent or legal guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and for legal counsel appointed for the parent or guardian under Subsection (2)(d), according to the parent's or guardian's financial ability.

(3) Notice and a copy of the petition shall be served on all persons required to receive notice under Subsection (1) as soon as possible after the petition is filed and at least five days prior to the time set for the hearing.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-311. Adjudication -- Dispositional hearing -- Time deadlines.

(1) If, at the adjudication hearing, the court finds, by clear and convincing evidence, that the allegations contained in the petition are true, it shall conduct a dispositional hearing.

(2) The dispositional hearing may be held on the same date as the adjudication hearing, but shall be held no later than 30 calendar days after the date of the adjudication hearing.

(3) At the adjudication hearing or the dispositional hearing the court shall schedule dates and times for:

(a) the six-month periodic review; and

(b) the permanency hearing.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may:

(a) make any of the dispositions described in Section 78A-6-117;

(b) place the minor in the custody or guardianship of any:

(i) individual; or

(ii) public or private entity or agency; or

(c) order:

(i) protective supervision;

(ii) family preservation;

(iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or

(iv) other services.

(2) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the division, the court shall first:

(a) establish a primary permanency goal for the minor; and

(b) determine whether, in view of the primary permanency goal, reunification services are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).

(3) Subject to Subsections (6) and (7), if the court determines that reunification services are appropriate for the minor and the minor's family, the court shall provide for reasonable parent-time with the parent or parents from whose custody the minor was removed, unless parent-time is not in the best interest of the minor.

(4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents.

(5) In all cases, the minor's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.

(6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless the court makes a finding that it is necessary to deny parent-time in order to:

(a) protect the physical safety of the minor;

(b) protect the life of the minor; or

(c) prevent the minor from being traumatized by contact with the parent due to the minor's fear of the parent in light of the nature of the alleged abuse or neglect.

(7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a parent's failure to:

(a) prove that the parent has not used legal or illegal substances; or

(b) comply with an aspect of the child and family plan that is ordered by the court.

(8) In addition to the primary permanency goal, the court shall establish a concurrent permanency goal that shall include:

(a) a representative list of the conditions under which the primary permanency goal will be abandoned in favor of the concurrent permanency goal; and

(b) an explanation of the effect of abandoning or modifying the primary permanency goal.

(9) A permanency hearing shall be conducted in accordance with Subsection 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if something other than reunification is initially established as a minor's primary permanency goal.

(10) (a) The court may amend a minor's primary permanency goal before the establishment of a final permanency plan under Section 78A-6-314.

(b) The court is not limited to the terms of the concurrent permanency goal in the event that the primary permanency goal is abandoned.

(c) If, at any time, the court determines that reunification is no longer a minor's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78A-6-314 on or before the earlier of:

(i) 30 days after the day on which the court makes the determination described in this Subsection (10)(c); or

(ii) the day on which the provision of reunification services, described in Section 78A-6-314, ends.

(11) (a) If the court determines that reunification services are appropriate, it shall order that the division make reasonable efforts to provide services to the minor and the minor's parent for the purpose of facilitating reunification of the family, for a specified

period of time.

(b) In providing the services described in Subsection (11)(a), the minor's health, safety, and welfare shall be the division's paramount concern, and the court shall so order.

(12) The court shall:

(a) determine whether the services offered or provided by the division under the child and family plan constitute "reasonable efforts" on the part of the division;

(b) determine and define the responsibilities of the parent under the child and family plan in accordance with Subsection 62A-4a-205(6)(e); and

(c) identify verbally on the record, or in a written document provided to the parties, the responsibilities described in Subsection (12)(b), for the purpose of assisting in any future determination regarding the provision of reasonable efforts, in accordance with state and federal law.

(13) (a) The time period for reunification services may not exceed 12 months from the date that the minor was initially removed from the minor's home, unless the time period is extended under Subsection 78A-6-314(8).

(b) Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services.

(14) (a) If reunification services are ordered, the court may terminate those services at any time.

(b) If, at any time, continuation of reasonable efforts to reunify a minor is determined to be inconsistent with the final permanency plan for the minor established pursuant to Section 78A-6-314, then measures shall be taken, in a timely manner, to:

(i) place the minor in accordance with the permanency plan; and

(ii) complete whatever steps are necessary to finalize the permanent placement of the minor.

(15) Any physical custody of the minor by the parent or a relative during the period described in Subsections (11) through (14) does not interrupt the running of the period.

(16) (a) If reunification services are ordered, a permanency hearing shall be conducted by the court in accordance with Section 78A-6-314 at the expiration of the time period for reunification services.

(b) The permanency hearing shall be held no later than 12 months after the original removal of the minor.

(c) If reunification services are not ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

(17) With regard to a minor who is 36 months of age or younger at the time the minor is initially removed from the home, the court shall:

(a) hold a permanency hearing eight months after the date of the initial removal, pursuant to Section 78A-6-314; and

(b) order the discontinuance of those services after eight months from the initial removal of the minor from the home if the parent or parents have not made substantial efforts to comply with the child and family plan.

(18) With regard to a minor in the custody of the division whose parent or parents are ordered to receive reunification services but who have abandoned that minor for a period of six months from the date that reunification services were ordered:

(a) the court shall terminate reunification services; and

(b) the division shall petition the court for termination of parental rights.

(19) When a court conducts a permanency hearing for a minor under Section 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the sibling group together is:

(a) practicable; and

(b) in accordance with the best interest of the minor.

(20) (a) Because of the state's interest in and responsibility to protect and provide permanency for minors who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited.

(b) The court may determine that:

(i) efforts to reunify a minor with the minor's family are not reasonable or appropriate, based on the individual circumstances; and

(ii) reunification services should not be provided.

(c) In determining "reasonable efforts" to be made with respect to a minor, and in making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount concern.

(21) There is a presumption that reunification services should not be provided to a parent if the court finds, by clear and convincing evidence, that any of the following circumstances exist:

(a) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;

(b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services;

(c) the minor was previously adjudicated as an abused child due to physical abuse, sexual abuse, or sexual exploitation, and following the adjudication the minor:

(i) was removed from the custody of the minor's parent;

(ii) was subsequently returned to the custody of the parent; and

(iii) is being removed due to additional physical abuse, sexual abuse, or sexual exploitation;

(d) the parent:

(i) caused the death of another minor through abuse or neglect;

(ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

(A) murder or manslaughter of a child; or

(B) child abuse homicide;

(iii) committed sexual abuse against the child; or

(iv) is a registered sex offender or required to register as a sex offender;

(e) the minor suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was abusing the minor;

(f) the minor is adjudicated an abused child as a result of severe abuse by the parent, and the court finds that it would not benefit the minor to pursue reunification services with the offending parent;

(g) the parent's rights are terminated with regard to any other minor;

(h) the minor is removed from the minor's home on at least two previous occasions and reunification services were offered or provided to the family at those

times;

(i) the parent has abandoned the minor for a period of six months or longer;

(j) the parent permitted the child to reside, on a permanent or temporary basis, at a location where the parent knew or should have known that a clandestine laboratory operation was located;

(k) except as provided in Subsection (22)(b), with respect to a parent who is the child's birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was exposed to an illegal or prescription drug that was abused by the child's mother while the child was in utero, if the child was taken into division custody for that reason, unless the mother agrees to enroll in, is currently enrolled in, or has recently and successfully completed a substance abuse treatment program approved by the department; or

(l) any other circumstance that the court determines should preclude reunification efforts or services.

(22) (a) The finding under Subsection (21)(b) shall be based on competent evidence from at least two medical or mental health professionals, who are not associates, establishing that, even with the provision of services, the parent is not likely to be capable of adequately caring for the minor within 12 months after the day on which the court finding is made.

(b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under the circumstances of the case, that the substance abuse treatment described in Subsection (21)(k) is not warranted.

(23) In determining whether reunification services are appropriate, the court shall take into consideration:

(a) failure of the parent to respond to previous services or comply with a previous child and family plan;

(b) the fact that the minor was abused while the parent was under the influence of drugs or alcohol;

(c) any history of violent behavior directed at the child or an immediate family member;

(d) whether a parent continues to live with an individual who abused the minor;

(e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

(f) testimony by a competent professional that the parent's behavior is unlikely to be successful; and

(g) whether the parent has expressed an interest in reunification with the minor.

(24) (a) If reunification services are not ordered pursuant to Subsections (20) through (22), and the whereabouts of a parent become known within six months after the day on which the out-of-home placement of the minor is made, the court may order the division to provide reunification services.

(b) The time limits described in Subsections (2) through (19) are not tolled by the parent's absence.

(25) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor.

(b) In making the determination described in Subsection (25)(a), the court shall

consider:

(i) the age of the minor;

(ii) the degree of parent-child bonding;

(iii) the length of the sentence;

(iv) the nature of the treatment;

(v) the nature of the crime or illness;

(vi) the degree of detriment to the minor if services are not offered;

(vii) for a minor 10 years of age or older, the minor's attitude toward the implementation of family reunification services; and

(viii) any other appropriate factors.

(c) Reunification services for an incarcerated parent are subject to the time limitations imposed in Subsections (2) through (19).

(d) Reunification services for an institutionalized parent are subject to the time limitations imposed in Subsections (2) through (19), unless the court determines that continued reunification services would be in the minor's best interest.

(26) If, pursuant to Subsections (21)(b) through (l), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

Amended by Chapter 293, 2012 General Session

78A-6-313. Six-month review hearing -- Court determination regarding reasonable efforts by the Division of Child and Family Services and parental compliance with child and family plan requirements.

If reunification efforts have been ordered by the court, a hearing shall be held no more than six months after initial removal of a minor from the minor's home, in order for the court to determine whether:

(1) the division has provided and is providing "reasonable efforts" to reunify a family, in accordance with the child and family plan established under Section 62A-4a-205; and

(2) the parent has fulfilled or is fulfilling identified duties and responsibilities in order to comply with the requirements of the child and family plan.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-314. Permanency hearing -- Final plan -- Petition for termination of parental rights filed -- Hearing on termination of parental rights.

(1) (a) When reunification services have been ordered in accordance with Section 78A-6-312, with regard to a minor who is in the custody of the Division of Child and Family Services, a permanency hearing shall be held by the court no later than 12 months after the day on which the minor was initially removed from the minor's home.

(b) If reunification services were not ordered at the dispositional hearing, a permanency hearing shall be held within 30 days after the day on which the dispositional hearing ends.

(2) (a) If reunification services were ordered by the court in accordance with Section 78A-6-312, the court shall, at the permanency hearing, determine, consistent

with Subsection (3), whether the minor may safely be returned to the custody of the minor's parent.

(b) If the court finds, by a preponderance of the evidence, that return of the minor to the minor's parent would create a substantial risk of detriment to the minor's physical or emotional well-being, the minor may not be returned to the custody of the minor's parent.

(c) Prima facie evidence that return of the minor to a parent or guardian would create a substantial risk of detriment to the minor is established if the parent or guardian fails to:

(i) participate in a court approved child and family plan;

(ii) comply with a court approved child and family plan in whole or in part; or

(iii) meet the goals of a court approved child and family plan.

(3) In making a determination under Subsection (2)(a), the court shall review and consider:

(a) the report prepared by the Division of Child and Family Services;

(b) any admissible evidence offered by the minor's guardian ad litem;

(c) any report submitted by the division under Subsection 78A-6-315(3)(a)(i);

(d) any evidence regarding the efforts or progress demonstrated by the parent; and

(e) the extent to which the parent cooperated and utilized the services provided.

(4) With regard to a case where reunification services were ordered by the court, if a minor is not returned to the minor's parent or guardian at the permanency hearing, the court shall, unless the time for the provision of reunification services is extended under Subsection (8):

(a) order termination of reunification services to the parent;

(b) make a final determination regarding whether termination of parental rights, adoption, or permanent custody and guardianship is the most appropriate final plan for the minor, taking into account the minor's primary permanency goal established by the court pursuant to Section 78A-6-312; and

(c) establish a concurrent plan that identifies the second most appropriate final plan for the minor.

(5) If the Division of Child and Family Services documents to the court that there is a compelling reason that adoption, reunification, guardianship, and a placement described in Subsection 78A-6-306(6)(e) are not in the minor's best interest, the court may order another planned permanent living arrangement, in accordance with federal law.

(6) If the minor clearly desires contact with the parent, the court shall take the minor's desire into consideration in determining the final plan.

(7) Except as provided in Subsection (8), the court may not extend reunification services beyond 12 months after the day on which the minor was initially removed from the minor's home, in accordance with the provisions of Section 78A-6-312.

(8) (a) Subject to Subsection (8)(b), the court may extend reunification services for no more than 90 days if the court finds, beyond a preponderance of the evidence, that:

(i) there has been substantial compliance with the child and family plan;

(ii) reunification is probable within that 90-day period; and

(iii) the extension is in the best interest of the minor.

(b) (i) Except as provided in Subsection (8)(c), the court may not extend any reunification services beyond 15 months after the day on which the minor was initially removed from the minor's home.

(ii) Delay or failure of a parent to establish paternity or seek custody does not provide a basis for the court to extend services for that parent beyond the 12-month period described in Subsection (7).

(c) In accordance with Subsection (8)(d), the court may extend reunification services for one additional 90-day period, beyond the 90-day period described in Subsection (8)(a), if:

(i) the court finds, by clear and convincing evidence, that:

(A) the parent has substantially complied with the child and family plan;

(B) it is likely that reunification will occur within the additional 90-day period; and

(C) the extension is in the best interest of the child;

(ii) the court specifies the facts upon which the findings described in Subsection (8)(c)(i) are based; and

(iii) the court specifies the time period in which it is likely that reunification will occur.

(d) A court may not extend the time period for reunification services without complying with the requirements of this Subsection (8) before the extension.

(e) In determining whether to extend reunification services for a minor, a court shall take into consideration the status of the minor siblings of the minor.

(9) The court may, in its discretion:

(a) enter any additional order that it determines to be in the best interest of the minor, so long as that order does not conflict with the requirements and provisions of Subsections (4) through (8); or

(b) order the division to provide protective supervision or other services to a minor and the minor's family after the division's custody of a minor has been terminated.

(10) If the final plan for the minor is to proceed toward termination of parental rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45 calendar days after the permanency hearing.

(11) (a) Any party to an action may, at any time, petition the court for an expedited permanency hearing on the basis that continuation of reunification efforts are inconsistent with the permanency needs of the minor.

(b) If the court so determines, it shall order, in accordance with federal law, that:

(i) the minor be placed in accordance with the permanency plan; and

(ii) whatever steps are necessary to finalize the permanent placement of the minor be completed as quickly as possible.

(12) Nothing in this section may be construed to:

(a) entitle any parent to reunification services for any specified period of time;

(b) limit a court's ability to terminate reunification services at any time prior to a permanency hearing; or

(c) limit or prohibit the filing of a petition for termination of parental rights by any party, or a hearing on termination of parental rights, at any time prior to a permanency hearing.

(13) (a) Subject to Subsection (13)(b), if a petition for termination of parental

rights is filed prior to the date scheduled for a permanency hearing, the court may consolidate the hearing on termination of parental rights with the permanency hearing.

(b) For purposes of Subsection (13)(a), if the court consolidates the hearing on termination of parental rights with the permanency hearing:

(i) the court shall first make a finding regarding whether reasonable efforts have been made by the Division of Child and Family Services to finalize the permanency goal for the minor; and

(ii) any reunification services shall be terminated in accordance with the time lines described in Section 78A-6-312.

(c) A decision on a petition for termination of parental rights shall be made within 18 months from the day on which the minor is removed from the minor's home.

(14) If a court determines that a child will not be returned to a parent of the child, the court shall consider appropriate placement options inside and outside of the state.

Amended by Chapter 322, 2010 General Session

78A-6-315. Periodic review hearings.

(1) At least every six months, the division or the court shall conduct a periodic review of the status of each child in the custody of the division, until the court terminates the division's custody of the child.

(2) (a) The review described in Subsection (1) shall be conducted in accordance with the requirements of the case review system described in 42 U.S.C. Section 675.

(b) If a review described in Subsection (1) is conducted by the division, the division shall:

(i) conduct the review in accordance with the administrative review requirements of 42 U.S.C. Section 675; and

(ii) to the extent practicable, involve volunteer citizens in the administrative review process.

(3) (a) Within 30 days after completion of a review conducted by the division, the division shall:

(i) submit a copy of its dispositional report to the court to be made a part of the court's legal file; and

(ii) provide a copy of the dispositional report to each party in the case to which the review relates.

(b) The court shall receive and review each dispositional report submitted under Subsection (3)(a)(i) in the same manner as the court receives and reviews a report described in Section 78A-6-605.

(c) If a report submitted under Subsection (3)(a)(i) is determined to be an ex parte communication with a judge, the report shall be considered a communication authorized by law.

(d) A report described in Subsection (3)(a)(i) may be received as evidence, and may be considered by the court along with other evidence. The court may require any person who participated in the dispositional report to appear as a witness if the person is reasonably available.

Amended by Chapter 161, 2009 General Session

78A-6-316. Mandatory petition for termination of parental rights.

(1) For purposes of this section, "abandoned infant" means a child who is 12 months of age or younger whose parent or parents:

(a) although having legal custody of the child, fail to maintain physical custody of the child without making arrangements for the care of the child;

(b) have failed to:

(i) maintain physical custody; and

(ii) exhibit the normal interest of a natural parent without just cause; or

(c) are unwilling to have physical custody of the child.

(2) Except as provided in Subsection (3), notwithstanding any other provision of this chapter or of Title 62A, Chapter 4a, Child and Family Services, the division shall file a petition for termination of parental rights with regard to:

(a) an abandoned infant; or

(b) the child of a parent, whenever a court has determined that the parent has:

(i) committed murder or child abuse homicide of another child of that parent;

(ii) committed manslaughter of another child of that parent;

(iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse homicide, or manslaughter against another child of that parent; or

(iv) committed a felony assault or abuse that results in serious physical injury to:

(A) another child of that parent; or

(B) the other parent of the child.

(3) The division is not required to file a petition for termination of parental rights under Subsection (2) if:

(a) the child is being cared for by a relative;

(b) the division has:

(i) documented in the child's child and family plan a compelling reason for determining that filing a petition for termination of parental rights is not in the child's best interest; and

(ii) made that child and family plan available to the court for its review; or

(c) (i) the court has previously determined, in accordance with the provisions and limitations of Sections 62A-4a-201, 62A-4a-203, 78A-6-306, and 78A-6-312, that reasonable efforts to reunify the child with the child's parent or parents were required; and

(ii) the division has not provided, within the time period specified in the child and family plan, services that had been determined to be necessary for the safe return of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-317. All proceedings -- Persons entitled to be present.

(1) A child who is the subject of a juvenile court hearing, any person entitled to notice pursuant to Section 78A-6-306 or 78A-6-310, preadoptive parents, foster parents, and any relative providing care for the child, are:

(a) entitled to notice of, and to be present at, each hearing and proceeding held under this part, including administrative reviews; and

(b) have a right to be heard at each hearing and proceeding described in

Subsection (1)(a).

(2) A child shall be represented at each hearing by the guardian ad litem appointed to the child's case by the court. The child has a right to be present at each hearing, subject to the discretion of the guardian ad litem or the court regarding any possible detriment to the child.

(3) (a) The parent or guardian of a child who is the subject of a petition under this part has the right to be represented by counsel, and to present evidence, at each hearing.

(b) When it appears to the court that a parent or guardian of the child desires counsel but is financially unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioner is recommending that the child be placed in out-of-home care, the court shall appoint counsel.

(4) In every abuse, neglect, or dependency proceeding under this chapter, the court shall order that the child be represented by a guardian ad litem, in accordance with Section 78A-6-902. The guardian ad litem shall represent the best interest of the child, in accordance with the requirements of that section, at the shelter hearing and at all subsequent court and administrative proceedings, including any proceeding for termination of parental rights in accordance with Part 5, Termination of Parental Rights Act.

(5) (a) Except as provided in Subsection (5)(b), and notwithstanding any other provision of law:

(i) counsel for all parties to the action shall be given access to all records, maintained by the division or any other state or local public agency, that are relevant to the abuse, neglect, or dependency proceeding under this chapter; and

(ii) if the natural parent of a child is not represented by counsel, the natural parent shall have access to the records described in Subsection (5)(a)(i).

(b) The disclosures described in Subsection (5)(a) are not required in the following circumstances:

(i) subject to Subsection (5)(c), the division or other state or local public agency did not originally create the record being requested;

(ii) disclosure of the record would jeopardize the life or physical safety of a child who has been a victim of abuse or neglect, or any person who provided substitute care for the child;

(iii) disclosure of the record would jeopardize the anonymity of the person or persons making the initial report of abuse or neglect or any others involved in the subsequent investigation;

(iv) disclosure of the record would jeopardize the life or physical safety of a person who has been a victim of domestic violence;

(v) the record is a report maintained in the Management Information System, for which a finding of unsubstantiated, unsupported, or without merit has been made, unless the person requesting the information is the alleged perpetrator in the report or counsel for the alleged perpetrator in the report; or

(vi) the record is a Children's Justice Center investigative interview, video or audio, the release of which is governed by Section 77-37-4.

(c) If a disclosure is denied under Subsection (5)(b)(i), the division shall inform the person making the request of the following:

(i) the existence of all records in the possession of the division or any other state or local public agency;

(ii) the name and address of the person or agency that originally created the record; and

(iii) that the person must seek access to the record from the person or agency that originally created the record.

Amended by Chapter 247, 2010 General Session

78A-6-318. Review of foster care removal -- Foster parent's standing.

(1) With regard to a child in the custody of the Division of Child and Family Services who is the subject of a petition alleging abuse, neglect, or dependency, and who has been placed in foster care with a foster family, the Legislature finds that:

(a) except with regard to the child's natural parents, a foster family has a very limited but recognized interest in its familial relationship with the child; and

(b) children in the custody of the division are experiencing multiple changes in foster care placements with little or no documentation, and that numerous studies of child growth and development emphasize the importance of stability in foster care living arrangements.

(2) For the reasons described in Subsection (1), the Legislature finds that, except with regard to the child's natural parents, procedural due process protections must be provided to a foster family prior to removal of a foster child from the foster home.

(3) (a) A foster parent who has had a foster child in the foster parent's home for 12 months or longer may petition the juvenile court for a review and determination of the appropriateness of a decision by the Division of Child and Family Services to remove the child from the foster home, unless the removal was for the purpose of:

(i) returning the child to the child's natural parent or legal guardian;

(ii) immediately placing the child in an approved adoptive home;

(iii) placing the child with a relative, as defined in Subsection 78A-6-307(1)(b), who obtained custody or asserted an interest in the child within the preference period described in Subsection 78A-6-307(18)(a); or

(iv) placing an Indian child in accordance with preplacement preferences and other requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

(b) The foster parent may petition the court under this section without exhausting administrative remedies within the division.

(c) The court may order the division to place the child in a specified home, and shall base its determination on the best interest of the child.

(4) The requirements of this section do not apply to the removal of a child based on a foster parent's request for that removal.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 17, 2008 General Session

78A-6-319. Educational neglect of a child -- Procedures -- Defenses.

(1) With regard to a child who is the subject of a petition under this chapter

based on educational neglect:

(a) if allegations include failure of a child to make adequate educational progress, the court shall permit demonstration of the child's educational skills and abilities based upon any of the criteria used in granting school credit, in accordance with Section 53A-11-102.5;

(b) parental refusal to comply with actions taken by school authorities in violation of Sections 53A-13-101.1, 53A-13-101.2, or 53A-13-101.3, does not constitute educational neglect;

(c) parental refusal to support efforts by a school to encourage a child to act in accordance with any educational objective that focuses on the adoption or expression of a personal philosophy, attitude, or belief that is not reasonably necessary to maintain order and discipline in the school, prevent unreasonable endangerment of persons or property, or to maintain concepts of civility and propriety appropriate to a school setting, does not constitute educational neglect; and

(d) an allegation of educational neglect may not be sustained, based solely on a child's absence from school, unless the child has been absent from school or from any given class, without good cause, for more than 10 consecutive school days or more than 1/16 of the applicable school term.

(2) A child may not be considered to be educationally neglected, for purposes of this chapter:

(a) unless there is clear and convincing evidence that:

(i) the child has failed to make adequate educational progress, and school officials have complied with the requirements of Section 53A-11-103; and

(ii) the child is two or more years behind the local public school's age group expectations in one or more basic skills, and is not receiving special educational services or systematic remediation efforts designed to correct the problem;

(b) if the child's parent or guardian establishes by a preponderance of the evidence that:

(i) school authorities have failed to comply with the requirements of Title 53A, Chapter 11 or 13;

(ii) the child is being instructed at home in compliance with Section 53A-11-102;

(iii) there is documentation that the child has demonstrated educational progress at a level commensurate with the child's ability;

(iv) the parent, guardian, or other person in control of the child has made a good faith effort to secure the child's regular attendance in school;

(v) good cause or a valid excuse exists for the child's absence from school;

(vi) the child is not required to attend school pursuant to court order or is exempt under other applicable state or federal law;

(vii) the student has performed above the twenty-fifth percentile of the local public school's age group expectations in all basic skills, as measured by a standardized academic achievement test administered by the school district where the student resides; or

(viii) the parent or guardian has proffered a reasonable alternative to required school curriculum, in accordance with Section 53A-13-101.2, that alternative was rejected by the school district, but the parents have implemented the alternative curriculum; or

(c) if the child is attending school on a regular basis.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-320. Proceedings arising from failure to attend public school.

(1) When a proceeding arises from a child's failure to attend public school based upon the assertion of a constitutional or statutory right or duty, raised either by the child or by the child's custodial parent, guardian, or custodian, the court shall hear the petition and resolve the issues associated with the asserted constitutional or statutory claims within 15 days after the petition is filed. The parties may waive the time limitation described in this subsection.

(2) Absent an emergency situation or other exigent circumstances, the court may not enter any order changing the educational status of the child that existed at the time the petition was filed, until the hearing described in Subsection (1) is concluded.

(3) Parties proceeding under this section shall, insofar as it is possible, provide the court with factual stipulations and make all other efforts that are reasonably available to minimize the time required to hear the claims described in Subsection (1).

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-321. Treatment for offender and victim -- Costs.

(1) Upon adjudication in the juvenile court of a person or persons charged with child abuse, child sexual abuse, or sexual exploitation of a child the court may order treatment for the adjudicated offender and the victim or the child victim.

(2) The adjudicated offender shall be required by the court to pay, to the extent that he is able, the costs of that treatment together with the administrative costs incurred by the division in monitoring completion of the ordered therapy or treatment.

(3) If the adjudicated offender is unable to pay the full cost of treatment, the court may order the Division of Child and Family Services to pay those costs, to the extent that funding is provided by the Legislature for that purpose, and the offender shall be required by the court to perform public service work as compensation for the cost of treatment.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-322. Abuse, neglect, or dependency of child -- Coordination of proceedings.

(1) In each case where an information or indictment has been filed against a defendant concerning abuse, neglect, or dependency of a child, and a petition has been filed in juvenile court concerning the victim, the appropriate county attorney's or district attorney's office shall coordinate with the attorney general's office.

(2) Law enforcement personnel, Division of Child and Family Services personnel, the appointed guardian ad litem, pretrial services personnel, and corrections personnel shall make reasonable efforts to facilitate the coordination required by this section.

(3) Members of interdisciplinary child protection teams, established under

Section 62A-4a-409, may participate in the coordination required by this section.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-323. Additional finding at adjudication hearing -- Petition -- Court records.

(1) Upon the filing with the court of a petition under Section 78A-6-304 by the Division of Child and Family Services or any interested person informing the court, among other things, that the division has made a supported finding that a person committed a severe type of child abuse or neglect as defined in Section 62A-4a-1002, the court shall:

(a) make a finding of substantiated, unsubstantiated, or without merit;

(b) include the finding described in Subsection (1)(a) in a written order; and

(c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

(2) The judicial finding under Subsection (1) shall be made:

(a) as part of the adjudication hearing;

(b) at the conclusion of the adjudication hearing; or

(c) as part of a court order entered pursuant to a written stipulation of the parties.

(3) (a) Any person described in Subsection 62A-4a-1010(1) may at any time file with the court a petition for removal of the person's name from the Licensing Information System.

(b) At the conclusion of the hearing on the petition, the court shall:

(i) make a finding of substantiated, unsubstantiated, or without merit;

(ii) include the finding described in Subsection (1)(a) in a written order; and

(iii) deliver a certified copy of the order described in Subsection (1)(b) to the division.

(4) A proceeding for adjudication of a supported finding under this section of a type of abuse or neglect that does not constitute a severe type of child abuse or neglect may be joined in the juvenile court with an adjudication of a severe type of child abuse or neglect.

(5) If a person whose name appears on the Licensing Information system prior to May 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to work with children or vulnerable adults is pending, the court shall hear the matter and enter a final decision no later than 60 days after the filing of the petition.

(6) For the purposes of licensing under Sections 26-39-402 and 62A-1-118, and for the purposes described in Section 62A-2-121 and Title 26, Chapter 21, Part 2, Clearance for Direct Patient Access:

(a) the court shall make available records of its findings under Subsections (1) and (2):

(i) for those purposes; and

(ii) only to those with statutory authority to access also the Licensing Information System created under Section 62A-4a-1006; and

(b) any appellate court shall make available court records of appeals from juvenile court decisions under Subsections (1), (2), (3), and (4):

(i) for those purposes; and

(ii) only to those with statutory authority to access also the Licensing Information System.

Amended by Chapter 328, 2012 General Session

78A-6-324. Mental health therapists.

(1) When a mental health practitioner is appointed in any juvenile court proceeding to evaluate the mental health of a parent or a minor, or to provide mental health services to a parent or minor, the court:

(a) may appoint any mental health therapist, as defined in Section 58-60-102, which the court finds to be qualified; and

(b) may not refuse to appoint a mental health therapist for the reason that the therapist's recommendations in another case have not followed the recommendations of the Division of Child and Family Services.

(2) This section applies to all juvenile court proceedings involving:

(a) parents and minors; or

(b) the Division of Child and Family Services.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-401. Separate procedures for minors committed to the Division of Child and Family Services on grounds other than abuse or neglect -- Attorney general responsibility.

(1) The processes and procedures described in Part 3, Abuse, Neglect, and Dependency Proceedings, designed to meet the needs of minors who are abused or neglected, are not applicable to a minor who is committed to the custody of the Division of Child and Family Services on a basis other than abuse or neglect and who are classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense.

(2) The procedures described in Subsection 78A-6-118(2)(a) are applicable to a minor described in Subsection (1).

(3) The court may appoint a guardian ad litem to represent the interests of a minor described in Subsection (1), upon request of the minor or the minor's parent or guardian.

(4) As of July 1, 1998, the attorney general's office shall represent the Division of Child and Family Services with regard to actions involving a minor who has not been adjudicated as abused or neglected, but who is otherwise committed to the custody of the division by the juvenile court, and who is classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense. Nothing in Subsection (3) may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with the provisions of Section 78A-6-115.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-501. Title.

This part is known as the "Termination of Parental Rights Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-502. Definitions.

As used in this chapter:

(1) "Division" means the Division of Child and Family Services within the Department of Human Services.

(2) "Failure of parental adjustment" means that a parent or parents are unable or unwilling within a reasonable time to substantially correct the circumstances, conduct, or conditions that led to placement of their child outside of their home, notwithstanding reasonable and appropriate efforts made by the Division of Child and Family Services to return the child to that home.

(3) "Plan" means a written agreement between the parents of a child, who has been removed from the child's home by the juvenile court, and the Division of Child and Family Services or written conditions and obligations imposed upon the parents directly by the juvenile court, that have a primary objective of reuniting the family or, if the parents fail or refuse to comply with the terms and conditions of the case plan, freeing the child for adoption.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-503. Judicial process for termination -- Parent unfit or incompetent -- Best interest of child.

(1) Under both the United States Constitution and the constitution of this state, a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's child.

(2) The court shall provide a fundamentally fair process to a parent if a party moves to terminate parental rights.

(3) If the party moving to terminate parental rights is a governmental entity, the court shall find that any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's child are supported by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the parent's fundamental rights and liberty interests.

(4) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's child is recognized, protected, and does not cease to exist simply because a parent may fail to be a model parent or because the parent's child is placed in the temporary custody of the state.

(5) At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life.

(6) Prior to an adjudication of unfitness, government action in relation to a parent and a parent's child may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest.

(7) Until parental unfitness is established, the child and the child's parent share a vital interest in preventing erroneous termination of their relationship and the court may not presume that a child and the child's parents are adversaries.

(8) It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships is usually best met by the child's natural parents. Additionally, the integrity of the family unit and the right of parents to conceive and raise their children are constitutionally protected.

(9) The right of a fit, competent parent to raise the parent's child without undue government interference is a fundamental liberty interest that has long been protected by the laws and Constitution of this state and of the United States, and is a fundamental public policy of this state.

(10) The state recognizes that:

(a) a parent has the right, obligation, responsibility, and authority to raise, manage, train, educate, provide for, and reasonably discipline the parent's children; and

(b) the state's role is secondary and supportive to the primary role of a parent.

(c) It is the public policy of this state that parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children.

(11) This part provides a judicial process for voluntary and involuntary severance of the parent-child relationship, designed to safeguard the rights and interests of all parties concerned and promote their welfare and that of the state.

(12) Wherever possible family life should be strengthened and preserved, but if a parent is found, by reason of his conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this part, the court shall then consider the welfare and best interest of the child of paramount importance in determining whether termination of parental rights shall be ordered.

Amended by Chapter 281, 2012 General Session

78A-6-504. Petition -- Who may file.

(1) Any interested party, including a foster parent, may file a petition for termination of the parent-child relationship with regard to a child.

(2) The attorney general shall file a petition for termination of parental rights under this part on behalf of the division.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-505. Contents of petition.

(1) The petition for termination of parental rights shall include, to the best information or belief of the petitioner:

(a) the name and place of residence of the petitioner;

(b) the name, sex, date and place of birth, and residence of the child;

(c) the relationship of the petitioner to the child;

(d) the names, addresses, and dates of birth of the parents, if known;

(e) the name and address of the person having legal custody or guardianship, or acting in loco parentis to the child, or the organization or agency having legal custody or providing care for the child;

(f) the grounds on which termination of parental rights is sought, in accordance

with Section 78A-6-507; and

(g) the names and addresses of the persons or the authorized agency to whom legal custody or guardianship of the child might be transferred.

(2) A copy of any relinquishment or consent, if any, previously executed by the parent or parents shall be attached to the petition.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-506. Notice -- Nature of proceedings.

(1) After a petition for termination of parental rights has been filed, notice of that fact and of the time and place of the hearing shall be provided, in accordance with the Utah Rules of Civil Procedure, to the parents, the guardian, the person or agency having legal custody of the child, and to any person acting in loco parentis to the child.

(2) A hearing shall be held specifically on the question of termination of parental rights no sooner than 10 days after service of summons is complete. A verbatim record of the proceedings shall be taken and the parties shall be advised of their right to counsel. The summons shall contain a statement to the effect that the rights of the parent or parents are proposed to be permanently terminated in the proceedings. That statement may be contained in the summons originally issued in the proceeding or in a separate summons subsequently issued.

(3) The proceedings are civil in nature and are governed by the Utah Rules of Civil Procedure. The court shall in all cases require the petitioner to establish the facts by clear and convincing evidence, and shall give full and careful consideration to all of the evidence presented with regard to the constitutional rights and claims of the parent and, if a parent is found, by reason of his conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this part, the court shall then consider the welfare and best interest of the child of paramount importance in determining whether termination of parental rights shall be ordered.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-507. Grounds for termination of parental rights -- Findings regarding reasonable efforts.

(1) Subject to the protections and requirements of Section 78A-6-503, and if the court finds strictly necessary, the court may terminate all parental rights with respect to a parent if the court finds any one of the following:

(a) that the parent has abandoned the child;

(b) that the parent has neglected or abused the child;

(c) that the parent is unfit or incompetent;

(d) (i) that the child is being cared for in an out-of-home placement under the supervision of the court or the division;

(ii) that the parent has substantially neglected, wilfully refused, or has been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home placement; and

(iii) that there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future;

(e) failure of parental adjustment, as defined in this chapter;

(f) that only token efforts have been made by the parent:

(i) to support or communicate with the child;

(ii) to prevent neglect of the child;

(iii) to eliminate the risk of serious harm to the child; or

(iv) to avoid being an unfit parent;

(g) (i) that the parent has voluntarily relinquished the parent's parental rights to the child; and

(ii) that termination is in the child's best interest;

(h) that, after a period of trial during which the child was returned to live in the child's own home, the parent substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection; or

(i) the terms and conditions of safe relinquishment of a newborn child have been complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child.

(2) The court may not terminate the parental rights of a parent because the parent has failed to complete the requirements of a child and family plan.

(3) (a) Except as provided in Subsection (3)(b), in any case in which the court has directed the division to provide reunification services to a parent, the court must find that the division made reasonable efforts to provide those services before the court may terminate the parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).

(b) Notwithstanding Subsection (3)(a), the court is not required to make the finding under Subsection (3)(a) before terminating a parent's rights:

(i) under Subsection (1)(b), if the court finds that the abuse or neglect occurred subsequent to adjudication; or

(ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not required under federal law, and federal law is not inconsistent with Utah law.

Amended by Chapter 281, 2012 General Session

78A-6-508. Evidence of grounds for termination.

(1) In determining whether a parent or parents have abandoned a child, it is prima facie evidence of abandonment that the parent or parents:

(a) although having legal custody of the child, have surrendered physical custody of the child, and for a period of six months following the surrender have not manifested to the child or to the person having the physical custody of the child a firm intention to resume physical custody or to make arrangements for the care of the child;

(b) have failed to communicate with the child by mail, telephone, or otherwise for six months;

(c) failed to have shown the normal interest of a natural parent, without just cause; or

(d) have abandoned an infant, as described in Subsection 78A-6-316(1).

(2) In determining whether a parent or parents are unfit or have neglected a child the court shall consider, but is not limited to, the following circumstances, conduct, or conditions:

(a) emotional illness, mental illness, or mental deficiency of the parent that

renders the parent unable to care for the immediate and continuing physical or emotional needs of the child for extended periods of time;

(b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive nature;

(c) habitual or excessive use of intoxicating liquors, controlled substances, or dangerous drugs that render the parent unable to care for the child;

(d) repeated or continuous failure to provide the child with adequate food, clothing, shelter, education, or other care necessary for the child's physical, mental, and emotional health and development by a parent or parents who are capable of providing that care;

(e) whether the parent is incarcerated as a result of conviction of a felony, and the sentence is of such length that the child will be deprived of a normal home for more than one year; or

(f) a history of violent behavior.

(3) A parent who, legitimately practicing the parent's religious beliefs, does not provide specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.

(4) (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or unfit because of a health care decision made for a child by the child's parent unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to obtain a second health care opinion.

(5) If a child has been placed in the custody of the division and the parent or parents fail to comply substantially with the terms and conditions of a plan within six months after the date on which the child was placed or the plan was commenced, whichever occurs later, that failure to comply is evidence of failure of parental adjustment.

(6) The following circumstances constitute prima facie evidence of unfitness:

(a) sexual abuse, sexual exploitation, injury, or death of a sibling of the child, or of any child, due to known or substantiated abuse or neglect by the parent or parents;

(b) conviction of a crime, if the facts surrounding the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care to the extent necessary for the child's physical, mental, or emotional health and development;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child;

(d) the parent has committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter of a child or child abuse homicide; or

(e) the parent intentionally, knowingly, or recklessly causes the death of another parent of the child, without legal justification.

Amended by Chapter 161, 2009 General Session

78A-6-509. Specific considerations where child is not in physical custody of parent.

(1) If a child is not in the physical custody of the parent or parents, the court, in

determining whether parental rights should be terminated shall consider, but is not limited to, the following:

(a) the physical, mental, or emotional condition and needs of the child and his desires regarding the termination, if the court determines he is of sufficient capacity to express his desires; and

(b) the effort the parent or parents have made to adjust their circumstances, conduct, or conditions to make it in the child's best interest to return him to his home after a reasonable length of time, including but not limited to:

(i) payment of a reasonable portion of substitute physical care and maintenance, if financially able;

(ii) maintenance of regular parent-time or other contact with the child that was designed and carried out in a plan to reunite the child with the parent or parents; and

(iii) maintenance of regular contact and communication with the custodian of the child.

(2) For purposes of this section, the court shall disregard incidental conduct, contributions, contacts, and communications.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-510. Specific considerations where a child has been placed in foster home.

If a child is in the custody of the division and has been placed and resides in a foster home and the division institutes proceedings under this part regarding the child, with an ultimate goal of having the child's foster parent or parents adopt him, the court shall consider whether the child has become integrated into the foster family to the extent that his familial identity is with that family, and whether the foster family is able and willing permanently to treat the child as a member of the family. The court shall also consider, but is not limited to, the following:

(1) the love, affection, and other emotional ties existing between the child and the parents, and the child's ties with the foster family;

(2) the capacity and disposition of the child's parents from whom the child was removed as compared with that of the foster family to give the child love, affection, and guidance and to continue the education of the child;

(3) the length of time the child has lived in a stable, satisfactory foster home and the desirability of his continuing to live in that environment;

(4) the permanence as a family unit of the foster family; and

(5) any other factor considered by the court to be relevant to a particular placement of a child.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-511. Court disposition of child upon termination.

(1) As used in this section, "relative" means:

(a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of a child; and

(b) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that statute.

(2) Upon entry of an order under this part the court may:

(a) place the child in the legal custody and guardianship of a licensed child placement agency or the division for adoption; or

(b) make any other disposition of the child authorized under Section 78A-6-117.

(3) Subject to the requirements of Subsections (4) and (5), all adoptable children placed in the custody of the division shall be placed for adoption.

(4) If the parental rights of all parents of an adoptable child placed in the custody of the division have been terminated and a suitable adoptive placement is not already available, the court:

(a) shall determine whether there is a relative who desires to adopt the child;

(b) may order the division to conduct a reasonable search to determine whether there are relatives who are willing to adopt the child; and

(c) shall, if a relative desires to adopt the child:

(i) make a specific finding regarding the fitness of the relative to adopt the child; and

(ii) place the child for adoption with that relative unless it finds that adoption by the relative is not in the best interest of the child.

(5) This section does not guarantee that a relative will be permitted to adopt the child.

Amended by Chapter 293, 2012 General Session

78A-6-512. Review following termination.

(1) At the conclusion of the hearing in which the court orders termination of the parent-child relationship, the court shall order that a review hearing be held within 90 days after the day on which the parent-child relationship is terminated, if the child has not been permanently placed.

(2) At that review hearing, the agency or individual vested with custody of the child shall report to the court regarding the plan for permanent placement of the child. The guardian ad litem shall make recommendations to the court, based on an independent investigation, for disposition meeting the best interests of the child.

(3) The court may order the agency or individual vested with custody of the child to report, at appropriate intervals, on the status of the child until the plan for permanent placement of the child has been accomplished.

Amended by Chapter 32, 2009 General Session

78A-6-513. Effect of decree.

(1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due him from any third person, including, but not limited to, any Indian tribe,

agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-514. Voluntary relinquishment -- Irrevocable.

(1) Voluntary relinquishment or consent for termination of parental rights shall be signed or confirmed under oath either:

(a) before a judge of any court that has jurisdiction over proceedings for termination of parental rights in this state or any other state, or a public officer appointed by that court for the purpose of taking consents or relinquishments; or

(b) except as provided in Subsection (2), any person authorized to take consents or relinquishments under Subsections 78B-6-124(1) and (2).

(2) Only the juvenile court is authorized to take consents or relinquishments from a parent who has any child who is in the custody of a state agency or who has a child who is otherwise under the jurisdiction of the juvenile court.

(3) The court, appointed officer, or other authorized person shall certify to the best of that person's information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily.

(4) A voluntary relinquishment or consent for termination of parental rights is effective when it is signed and may not be revoked.

(5) The requirements and processes described in Sections 78A-6-503 through 78A-6-510 do not apply to a voluntary relinquishment or consent for termination of parental rights. The court need only find that the relinquishment or termination is in the child's best interest.

(6) There is a presumption that voluntary relinquishment or consent for termination of parental rights is not in the child’s best interest where it appears to the court that the primary purpose is to avoid a financial support obligation. The presumption may be rebutted, however, if the court finds the relinquishment or consent to termination of parental rights will facilitate the establishment of stability and permanency for the child.

(7) Upon granting a voluntary relinquishment the court may make orders relating to the child's care and welfare that the court considers to be in the child's best interest.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-515. Mental health therapist.

(1) When a mental health practitioner is to be appointed in a parental rights action to evaluate the mental health of a parent or a child, or to provide mental health services to a parent or a child, the court:

(a) may appoint any mental health therapist, as defined in Section 58-60-102, which the court finds to be qualified;

(b) may not refuse to appoint a mental health therapist for the reason that the

therapist's recommendations in another case have not followed the recommendations of the Division of Child and Family Services or the Office of Guardian Ad Litem; and

(c) shall give strong consideration to the parent's or guardian's wishes regarding the selection of a mental health therapist.

(2) This section applies to all juvenile court proceedings involving:

(a) parents and children; or

(b) the Division of Child and Family Services.

Amended by Chapter 120, 2012 General Session

78A-6-601. Criminal proceedings involving minors -- Transfer to juvenile court -- Exception.

(1) If, during the pendency of a criminal or quasi-criminal proceeding in another court, including a preliminary hearing, it is determined that the person charged is under 21 years of age and was less than 18 years of age at the time of committing the alleged offense, that court shall transfer the case to the juvenile court, together with all the papers, documents, and transcripts of any testimony except as provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703.

(2) The court making the transfer shall order the person to be taken immediately to the juvenile court or to a place of detention designated by the juvenile court, or shall release him to the custody of his parent or guardian or other person legally responsible for him, to be brought before the juvenile court at a time designated by it. The juvenile court shall then proceed as provided in this chapter.

Amended by Chapter 38, 2010 General Session

78A-6-602. Petition -- Preliminary inquiry -- Nonjudicial adjustments -- Formal referral -- Citation -- Failure to appear.

(1) A proceeding in a minor's case is commenced by petition, except as provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703.

(2) (a) A peace officer or any public official of the state, any county, city, or town charged with the enforcement of the laws of the state or local jurisdiction shall file a formal referral with the juvenile court within 10 days of a minor's arrest. If the arrested minor is taken to a detention facility, the formal referral shall be filed with the juvenile court within 72 hours, excluding weekends and holidays. There shall be no requirement to file a formal referral with the juvenile court on an offense that would be a class B misdemeanor or less if committed by an adult.

(b) When the court is informed by a peace officer or other person that a minor is or appears to be within the court's jurisdiction, the probation department shall make a preliminary inquiry to determine whether the interests of the public or of the minor require that further action be taken.

(c) Based on the preliminary inquiry, the court may authorize the filing of or request that the county attorney or district attorney as provided under Sections 17-18-1 and 17-18-1.7 file a petition. In its discretion, the court may, through its probation department, enter into a written consent agreement with the minor and, if the minor is a child, the minor's parent, guardian, or custodian for the nonjudicial adjustment of the

case if the facts are admitted and establish prima facie jurisdiction. Efforts to effect a nonjudicial adjustment may not extend for a period of more than 90 days without leave of a judge of the court, who may extend the period for an additional 90 days.

(d) The nonjudicial adjustment of a case may include conditions agreed upon as part of the nonjudicial closure:

(i) payment of a financial penalty of not more than $250 to the Juvenile Court;

(ii) payment of victim restitution;

(iii) satisfactory completion of compensatory service;

(iv) referral to an appropriate provider for counseling or treatment;

(v) attendance at substance abuse programs or counseling programs;

(vi) compliance with specified restrictions on activities and associations; and

(vii) other reasonable actions that are in the interest of the child or minor and the community.

(e) Proceedings involving offenses under Section 78A-6-606 are governed by that section regarding suspension of driving privileges.

(f) A violation of Section 76-10-105 that is subject to the jurisdiction of the Juvenile Court shall include a minimum fine or penalty of $60 and participation in a court-approved tobacco education program, which may include a participation fee.

(3) Except as provided in Sections 78A-6-701 and 78A-6-702, in the case of a minor 14 years of age or older, the county attorney, district attorney, or attorney general may commence an action by filing a criminal information and a motion requesting the juvenile court to waive its jurisdiction and certify the minor to the district court.

(4) (a) In cases of violations of wildlife laws, boating laws, class B and class C misdemeanors, other infractions or misdemeanors as designated by general order of the Board of Juvenile Court Judges, and violations of Section 76-10-105 subject to the jurisdiction of the Juvenile Court, a petition is not required and the issuance of a citation as provided in Section 78A-6-603 is sufficient to invoke the jurisdiction of the court. A preliminary inquiry is not required unless requested by the court.

(b) Any failure to comply with the time deadline on a formal referral may not be the basis of dismissing the formal referral.

Amended by Chapter 38, 2010 General Session

78A-6-603. Citation procedure -- Citation -- Offenses -- Time limits -- Failure to appear.

(1) As used in this section, "citation" means an abbreviated referral and is sufficient to invoke the jurisdiction of the court in lieu of a petition.

(2) A citation shall be submitted to the court within five days of its issuance.

(3) Each copy of the citation shall contain:

(a) the name and address of the juvenile court before which the minor is to appear;

(b) the name of the minor cited;

(c) the statute or local ordinance that is alleged to have been violated;

(d) a brief description of the offense charged;

(e) the date, time, and location at which the offense is alleged to have occurred;

(f) the date the citation was issued;

(g) the name and badge or identification number of the peace officer or public official who issued the citation;

(h) the name of the arresting person if an arrest was made by a private party and the citation was issued in lieu of taking the arrested minor into custody as provided in Section 78A-6-112;

(i) the date and time when the minor is to appear, or a statement that the minor and parent or legal guardian are to appear when notified by the juvenile court; and

(j) the signature of the minor and the parent or legal guardian, if present, agreeing to appear at the juvenile court as designated on the citation.

(4) Each copy of the citation shall contain space for the following information to be entered if known:

(a) the minor's address;

(b) the minor's date of birth;

(c) the name and address of the child's custodial parent or legal guardian, if different from the child; and

(d) if there is a victim, the victim's name, address, and an estimate of loss, except that this information shall be removed from the documents the minor receives.

(5) A citation received by the court beyond the time designated in Subsection (2) shall include a written explanation for the delay.

(6) The following offenses may be sent to the juvenile court as a citation:

(a) violations of wildlife laws;

(b) violations of boating laws;

(c) violations of curfew laws;

(d) any class B misdemeanor or less traffic violations where the person is under the age of 16;

(e) any class B or class C misdemeanor or infraction;

(f) any other infraction or misdemeanor as designated by general order of the Board of Juvenile Court Judges; and

(g) violations of Section 76-10-105 subject to the jurisdiction of the Juvenile Court.

(7) A preliminary inquiry is not required unless requested by the court.

(8) The provisions of Subsection (5) may not apply to a runaway, ungovernable, or habitually truant child.

(9) In the case of Section 76-10-105 violations committed on school property when a citation is issued under this section, the peace officer, public official, or compliance officer shall issue one copy to the minor cited, provide the parent or legal guardian with a copy, and file a duplicate with the juvenile court specified in the citation within five days.

(10) (a) A minor receiving a citation described in this section shall appear at the juvenile court designated in the citation on the time and date specified in the citation or when notified by the juvenile court.

(b) A citation may not require a minor to appear sooner than five days following its issuance.

(11) A minor who receives a citation and willfully fails to appear before the juvenile court pursuant to a citation is subject to arrest and may be found in contempt of court. The court may proceed against the minor as provided in Section 78A-6-1101

regardless of the disposition of the offense upon which the minor was originally cited.

(12) When a citation is issued under this section, bail may be posted and forfeited under Subsection 78A-6-113(12) with the consent of:

(a) the court; and

(b) if the minor is a child, the parent or legal guardian of the child cited.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-604. Minor held in detention -- Credit for good behavior.

(1) The judge may order whether a minor held in detention under Subsection 78A-6-117(2)(f) or 78A-6-1101(3) is eligible to receive credit for good behavior against the period of detention. The rate of credit is one day for every three days served. The Division of Juvenile Justice Services shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish rules describing good behavior for which credit may be earned.

(2) Any disposition including detention under Subsection 78A-6-117(2)(f) or 78A-6-1101(3) shall be concurrent with any other order of detention.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-605. Dispositional report required in minor's cases -- Exceptions.

(1) The probation department or other agency designated by the court shall make a dispositional report in writing in all minor's cases in which a petition has been filed, except that the court may dispense with the study and report in cases involving violations of traffic laws or ordinances, violations of wildlife laws, boating laws, and other minor cases.

(2) When preparing a dispositional report and recommendation in a delinquency action, the probation department or other agency designated by the court shall consider the juvenile sentencing guidelines developed in accordance with Section 63M-7-404 and any aggravating or mitigating circumstances.

(3) Where the allegations of a petition filed under Subsection 78A-6-103(1) are denied, the investigation may not be made until the court has made an adjudication.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-606. Suspension of license for certain offenses.

(1) This section applies to a minor who is at least 13 years of age when found by the court to be within its jurisdiction by the commission of an offense under:

(a) Section 32B-4-409;

(b) Section 32B-4-410;

(c) Section 32B-4-411;

(d) Section 58-37-8;

(e) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(f) Title 58, Chapter 37b, Imitation Controlled Substances Act; or

(g) Subsection 76-9-701(1).

(2) If the court hearing the case determines that the minor committed an offense

under Section 58-37-8 or Title 58, Chapter 37a or 37b, the court shall prepare and send to the Driver License Division of the Department of Public Safety an order to suspend that minor's driving privileges.

(3) (a) The court hearing the case shall suspend the minor's driving privileges if:

(i) the minor violated Section 32B-4-409, Section 32B-4-410, or Subsection 76-9-701(1); and

(ii) the violation described in Subsection (3)(a)(i) was committed on or after July 1, 2009.

(b) Notwithstanding the requirement in Subsection (3)(a), the court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's first violation of Section 32B-4-409, Section 32B-4-410, or Subsection 76-9-701(1); and

(ii) the minor completes an educational series as defined in Section 41-6a-501.

(c) The suspension periods and requirements that were in effect prior to July 1, 2009, apply:

(i) to a minor that violated Section 32B-4-409, Section 32B-4-410, or Subsection 76-9-701(1); and

(ii) for a violation that was committed prior to July 1, 2009.

(d) If a minor commits a proof of age violation, as defined in Section 32B-4-411:

(i) the court shall forward a record of adjudication to the Department of Public Safety for a first or subsequent violation; and

(ii) the minor's driving privileges will be suspended:

(A) for a period of at least one year under Section 53-3-220 for a first conviction for a violation of Section 32B-4-411; or

(B) for a period of two years for a second or subsequent conviction for a violation of Section 32B-4-411.

(4) A minor's license shall be suspended under Section 53-3-219 when a court issues an order suspending the minor's driving privileges for a violation of:

(a) Section 32B-4-409;

(b) Section 32B-4-410;

(c) Section 58-37-8;

(d) Title 58, Chapter 37a or 37b; or

(e) Subsection 76-9-701(1).

(5) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended under this section, the Department of Public Safety shall extend the suspension for a like period of time.

Amended by Chapter 276, 2010 General Session

78A-6-701. Jurisdiction of district court.

(1) The district court has exclusive original jurisdiction over all persons 16 years of age or older charged with:

(a) an offense which would be murder or aggravated murder if committed by an adult; or

(b) an offense which would be a felony if committed by an adult if the minor has

been previously committed to a secure facility as defined in Section 62A-7-101. This Subsection (1)(b) shall not apply if the offense is committed in a secure facility.

(2) When the district court has exclusive original jurisdiction over a minor under this section, it also has exclusive original jurisdiction over the minor regarding all offenses joined with the qualifying offense, and any other offenses, including misdemeanors, arising from the same criminal episode. The district court is not divested of jurisdiction by virtue of the fact that the minor is allowed to enter a plea to, or is found guilty of, a lesser or joined offense.

(3) (a) Any felony, misdemeanor, or infraction committed after the offense over which the district court takes jurisdiction under Subsection (1) or (2) shall be tried against the defendant as an adult in the district court or justice court having jurisdiction.

(b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not guilty, or a dismissal of the charge in the district court, the juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain any jurisdiction and authority previously exercised over the minor.

Amended by Chapter 38, 2010 General Session

78A-6-702. Serious youth offender -- Procedure.

(1) Any action filed by a county attorney, district attorney, or attorney general charging a minor 16 years of age or older with a felony shall be by criminal information and filed in the juvenile court if the information charges any of the following offenses:

(a) any felony violation of:

(i) Section 76-6-103, aggravated arson;

(ii) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

(iii) Section 76-5-302, aggravated kidnaping;

(iv) Section 76-6-203, aggravated burglary;

(v) Section 76-6-302, aggravated robbery;

(vi) Section 76-5-405, aggravated sexual assault;

(vii) Section 76-10-508.1, felony discharge of a firearm;

(viii) Section 76-5-202, attempted aggravated murder; or

(ix) Section 76-5-203, attempted murder; or

(b) an offense other than those listed in Subsection (1)(a) involving the use of a dangerous weapon which would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon which also would have been a felony if committed by an adult.

(2) All proceedings before the juvenile court related to charges filed under Subsection (1) shall be conducted in conformity with the rules established by the Utah Supreme Court.

(3) (a) If the information alleges the violation of a felony listed in Subsection (1), the state shall have the burden of going forward with its case and the burden of proof to establish probable cause to believe that one of the crimes listed in Subsection (1) has been committed and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have the additional burden of proving by a preponderance of the evidence that the defendant has previously been adjudicated or convicted of an offense

involving the use of a dangerous weapon.

(b) If the juvenile court judge finds the state has met its burden under this Subsection (3), the court shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult unless the juvenile court judge finds that all of the following conditions exist:

(i) the minor has not been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;

(ii) that if the offense was committed with one or more other persons, the minor appears to have a lesser degree of culpability than the codefendants; and

(iii) that the minor's role in the offense was not committed in a violent, aggressive, or premeditated manner.

(c) Once the state has met its burden under this Subsection (3) as to a showing of probable cause, the defendant shall have the burden of going forward and presenting evidence as to the existence of the above conditions.

(d) If the juvenile court judge finds by clear and convincing evidence that all the above conditions are satisfied, the court shall so state in its findings and order the minor held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(4) If the juvenile court judge finds that an offense has been committed, but that the state has not met its burden of proving the other criteria needed to bind the defendant over under Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(5) At the time of a bind over to district court a criminal warrant of arrest shall issue. The defendant shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(6) If an indictment is returned by a grand jury charging a violation under this section, the preliminary examination held by the juvenile court judge need not include a finding of probable cause that the crime alleged in the indictment was committed and that the defendant committed it, but the juvenile court shall proceed in accordance with this section regarding the additional considerations listed in Subsection (3)(b).

(7) When a defendant is charged with multiple criminal offenses in the same information or indictment and is bound over to answer in the district court for one or more charges under this section, other offenses arising from the same criminal episode and any subsequent misdemeanors or felonies charged against him shall be considered together with those charges, and where the court finds probable cause to believe that those crimes have been committed and that the defendant committed them, the defendant shall also be bound over to the district court to answer for those charges.

(8) When a minor has been bound over to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor, except as provided in Subsection (12).

(9) A minor who is bound over to answer as an adult in the district court under

this section or on whom an indictment has been returned by a grand jury is not entitled to a preliminary examination in the district court.

(10) Allegations contained in the indictment or information that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need to be proven at trial in the district court.

(11) If a minor enters a plea to, or is found guilty of, any of the charges filed or any other offense arising from the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(12) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Amended by Chapter 118, 2012 General Session

78A-6-703. Certification hearings -- Juvenile court to hold preliminary hearing -- Factors considered by juvenile court for waiver of jurisdiction to district court.

(1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges the commission of an act which would constitute a felony if committed by an adult, the juvenile court shall conduct a preliminary hearing.

(2) At the preliminary hearing the state shall have the burden of going forward with its case and the burden of establishing:

(a) probable cause to believe that a crime was committed and that the defendant committed it; and

(b) by a preponderance of the evidence, that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.

(3) In considering whether or not it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the minor under circumstances which would subject the minor to enhanced penalties under Section 76-3-203.1 if the minor were adult and the offense was committed:

(i) in concert with two or more persons;

(ii) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(iii) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except as provided in Section 76-8-418;

(e) the maturity of the minor as determined by considerations of the minor's home, environment, emotional attitude, and pattern of living;

(f) the record and previous history of the minor;

(g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile court;

(h) the desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime in the district court;

(i) whether the minor used a firearm in the commission of an offense; and

(j) whether the minor possessed a dangerous weapon on or about school premises as provided in Section 76-10-505.5.

(4) The amount of weight to be given to each of the factors listed in Subsection (3) is discretionary with the court.

(5) (a) Written reports and other materials relating to the minor's mental, physical, educational, and social history may be considered by the court.

(b) If requested by the minor, the minor's parent, guardian, or other interested party, the court shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(6) At the conclusion of the state's case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).

(7) If the court finds the state has met its burden under Subsection (2), the court may enter an order:

(a) certifying that finding; and

(b) directing that the minor be held for criminal proceedings in the district court.

(8) If an indictment is returned by a grand jury, the preliminary examination held by the juvenile court need not include a finding of probable cause, but the juvenile court shall proceed in accordance with this section regarding the additional consideration referred to in Subsection (2)(b).

(9) The provisions of Section 78A-6-115, Section 78A-6-1111, and other provisions relating to proceedings in juvenile cases are applicable to the hearing held under this section to the extent they are pertinent.

(10) A minor who has been directed to be held for criminal proceedings in the district court is not entitled to a preliminary examination in the district court.

(11) A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(12) When a minor has been certified to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor, except as provided in Subsection (14).

(13) If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offense arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(14) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Amended by Chapter 38, 2010 General Session
Amended by Chapter 193, 2010 General Session

78A-6-704. Appeals from serious youth offender and certification proceedings.

(1) A minor may, as a matter of right, appeal from:

(a) an order of the juvenile court binding the minor over to the district court as a serious youth offender pursuant to Section 78A-6-702; or

(b) an order of the juvenile court, after certification proceedings pursuant to Section 78A-6-703, directing that the minor be held for criminal proceedings in the district court.

(2) The prosecution may, as a matter of right, appeal from:

(a) an order of the juvenile court that a minor charged as a serious youth offender pursuant to Section 78A-6-702 be held for trial in the juvenile court; or

(b) a refusal by the juvenile court, after certification proceedings pursuant to Section 78A-6-703, to order that a minor be held for criminal proceedings in the district court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-801. Purpose.

(1) The purpose of this part is to provide a means by which a minor who has demonstrated the ability and capacity to manage his or her own affairs and to live independent of his or her parents or guardian, may obtain the legal status of an emancipated person with the power to enter into valid legal contracts.

(2) This part is not intended to interfere with the integrity of the family or to minimize the rights of parents or children. As provided in Section 62A-4a-201, a parent possesses a fundamental liberty interest in the care, custody, and management of their children.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-802. Definitions.

As used in this part:

(1) "Guardian" has the same meaning as in Section 75-1-201.

(2) "Minor" means a person 16 years of age or older.

(3) "Parent" means a natural parent as defined in Section 78A-6-105.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-803. Petition for emancipation.

(1) A minor may petition the juvenile court on his or her own behalf in the district in which he or she resides for a declaration of emancipation. The petition shall be on a form provided by the clerk of the court, and state that the minor is:

(a) 16 years of age or older;

(b) capable of living independently of his or her parents or guardian; and

(c) capable of managing his or her own financial affairs.

(2) Notice of the petition shall be served on the minor's parents, guardian, any other person or agency with custody of the minor, and the Child and Family Support Division of the Office of the Attorney General, unless the court determines that service is impractical.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-804. Court procedure.

(1) Upon the filing of a petition in accordance with Section 78A-6-803, the court shall review the petition for completeness and whether the petitioner meets the age requirement for filing the petition.

(a) If the petition is incomplete or the petitioner does not meet the age requirement, the court may dismiss the action immediately.

(b) If the petition is complete and the petitioner meets the age requirement, the court shall schedule a pretrial hearing on the matter within 30 days.

(2) The court may appoint a guardian ad litem in accordance with Section 78A-6-902 to represent the minor.

(3) At the hearing, the court shall consider the best interests of the minor according to the following:

(a) whether the minor is capable of assuming adult responsibilities;

(b) whether the minor is capable of living independently of his or her parents, guardian, or custodian;

(c) opinions and recommendations from the guardian ad litem, parents, guardian, or custodian, and any other evidence; and

(d) whether emancipation will create a risk of harm to the minor.

(4) If the court determines by clear and convincing evidence that emancipation is in the best interests of the minor, it shall issue a declaration of emancipation.

Amended by Chapter 259, 2010 General Session

78A-6-805. Emancipation.

(1) An emancipated minor may:

(a) enter into contracts;

(b) buy and sell property;

(c) sue or be sued;

(d) retain his or her own earnings;

(e) borrow money for any purpose, including for education; and

(f) obtain healthcare without parental consent.

(2) An emancipated minor may not be considered an adult:

(a) under the criminal laws of the state unless the requirements of Part 7,

Transfer of Jurisdiction, have been met;

(b) under the criminal laws of the state when he or she is a victim and the age of the victim is an element of the offense; and

(c) for specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, possession of tobacco or firearms, and other health and safety regulations relevant to the minor because of the minor's age.

(3) An order of emancipation prospectively terminates parental responsibilities that accrue based on the minor's status as a minor under the custody and control of a parent, guardian, or custodian, including parental tort liability for the acts of the minor.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-901. Office of Guardian Ad Litem -- Appointment of director -- Duties of director -- Contracts in second, third, and fourth districts.

(1) As used in this part:

(a) "Director" means the director of the office.

(b) "Office" means the Office of Guardian Ad Litem, created in this section.

(2) There is created the Office of Guardian Ad Litem under the direct supervision of the Guardian Ad Litem Oversight Committee.

(3) (a) The Guardian Ad Litem Oversight Committee shall appoint one person to serve full time as the guardian ad litem director for the state. The guardian ad litem director shall serve at the pleasure of the Guardian Ad Litem Oversight Committee, in consultation with the state court administrator.

(b) The director shall be an attorney licensed to practice law in this state and selected on the basis of:

(i) professional ability;

(ii) experience in abuse, neglect, and dependency proceedings;

(iii) familiarity with the role, purpose, and function of guardians ad litem in both juvenile and district courts; and

(iv) ability to develop training curricula and reliable methods for data collection and evaluation.

(c) The director shall, prior to or immediately after the director's appointment, be trained in nationally recognized standards for an attorney guardian ad litem.

(4) The guardian ad litem director shall:

(a) establish policy and procedure for the management of a statewide guardian ad litem program;

(b) manage the guardian ad litem program to assure that minors receive qualified guardian ad litem services in abuse, neglect, and dependency proceedings in accordance with state and federal law and policy;

(c) develop standards for contracts of employment and contracts with independent contractors, and employ or contract with attorneys licensed to practice law in this state, to act as attorney guardians ad litem in accordance with Section 78A-6-902;

(d) develop and provide training programs for volunteers in accordance with the United States Department of Justice National Court Appointed Special Advocates Association standards;

(e) develop and update a guardian ad litem manual that includes:

(i) best practices for an attorney guardian ad litem; and

(ii) statutory and case law relating to an attorney guardian ad litem;

(f) develop and provide a library of materials for the continuing education of attorney guardians ad litem and volunteers;

(g) educate court personnel regarding the role and function of guardians ad litem;

(h) develop needs assessment strategies, perform needs assessment surveys, and ensure that guardian ad litem training programs correspond with actual and perceived needs for training;

(i) design and implement evaluation tools based on specific objectives targeted in the needs assessments described in Subsection (4)(h);

(j) prepare and submit an annual report to the Guardian Ad Litem Oversight Committee and the Child Welfare Legislative Oversight Panel regarding:

(i) the development, policy, and management of the statewide guardian ad litem program;

(ii) the training and evaluation of attorney guardians ad litem and volunteers; and

(iii) the number of minors served by the Office of Guardian Ad Litem;

(k) hire, train, and supervise investigators; and

(l) administer the program of private guardians ad litem established by Section 78A-2-228.

(5) A contract of employment or independent contract described under Subsection (4)(c) shall provide that attorney guardians ad litem in the second, third, and fourth judicial districts devote their full time and attention to the role of attorney guardian ad litem, having no clients other than the minors whose interest they represent within the guardian ad litem program.

Amended by Chapter 32, 2009 General Session

78A-6-902. Appointment of attorney guardian ad litem -- Duties and responsibilities -- Training -- Trained staff and court-appointed special advocate volunteers -- Costs -- Immunity -- Annual report.

(1) (a) The court:

(i) may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court; and

(ii) shall consider the best interest of a minor, consistent with the provisions of Section 62A-4a-201, in determining whether to appoint a guardian ad litem.

(b) In all cases where an attorney guardian ad litem is appointed, the court shall make a finding that establishes the necessity of the appointment.

(2) An attorney guardian ad litem shall represent the best interest of each child who may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of the day that:

(a) the child is removed from the child's home by the division; or

(b) the petition is filed.

(3) The director shall ensure that each attorney guardian ad litem employed by the office:

(a) represents the best interest of each client of the office in all venues, including:

(i) court proceedings; and

(ii) meetings to develop, review, or modify the child and family plan with the Division of Child and Family Services in accordance with Section 62A-4a-205;

(b) prior to representing any minor before the court, be trained in:

(i) applicable statutory, regulatory, and case law; and

(ii) nationally recognized standards for an attorney guardian ad litem;

(c) conducts or supervises an ongoing, independent investigation in order to obtain, first-hand, a clear understanding of the situation and needs of the minor;

(d) (i) personally meets with the minor, unless:

(A) the minor is outside of the state; or

(B) meeting with the minor would be detrimental to the minor;

(ii) personally interviews the minor, unless:

(A) the minor is not old enough to communicate;

(B) the minor lacks the capacity to participate in a meaningful interview; or

(C) the interview would be detrimental to the minor; and

(iii) if the minor is placed in an out-of-home placement, or is being considered for placement in an out-of-home placement, unless it would be detrimental to the minor:

(A) to the extent possible, determines the minor's goals and concerns regarding placement; and

(B) personally assesses or supervises an assessment of the appropriateness and safety of the minor's environment in each placement;

(e) personally attends all review hearings pertaining to the minor's case;

(f) participates in all appeals, unless excused by order of the court;

(g) is familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the Division of Child and Family Services to:

(i) maintain a minor in the minor's home; or

(ii) reunify a child with the child's parent;

(h) to the extent possible, and unless it would be detrimental to the minor, personally or through a trained volunteer, paralegal, or other trained staff, keeps the minor advised of:

(i) the status of the minor's case;

(ii) all court and administrative proceedings;

(iii) discussions with, and proposals made by, other parties;

(iv) court action; and

(v) the psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor; and

(i) in cases where a child and family plan is required, personally or through a trained volunteer, paralegal, or other trained staff, monitors implementation of a minor's child and family plan and any dispositional orders to:

(i) determine whether services ordered by the court:

(A) are actually provided; and

(B) are provided in a timely manner; and

(ii) attempt to assess whether services ordered by the court are accomplishing

the intended goal of the services.

(4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained staff to assist in investigation and preparation of information regarding the cases of individual minors before the court.

(b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained in and follow, at a minimum, the guidelines established by the United States Department of Justice Court Appointed Special Advocate Association.

(5) The attorney guardian ad litem shall continue to represent the best interest of the minor until released from that duty by the court.

(6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

(i) all costs resulting from the appointment of an attorney guardian ad litem; and

(ii) the costs of volunteer, paralegal, and other staff appointment and training.

(b) The court shall use funds appropriated by the Legislature for the guardian ad litem program to cover the costs described in Subsection (6)(a).

(c) (i) When the court appoints an attorney guardian ad litem under this section, the court may assess all or part of the attorney fees, court costs, and paralegal, staff, and volunteer expenses against the child's parents, parent, or legal guardian in a proportion that the court determines to be just and appropriate, taking into consideration costs already borne by the parents, parent, or legal guardian, including:

(A) private attorney fees;

(B) counseling for the child;

(C) counseling for the parent, if mandated by the court or recommended by the Division of Child and Family Services; and

(D) any other cost the court determines to be relevant.

(ii) The court may not assess those fees or costs against:

(A) a legal guardian, when that guardian is the state; or

(B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

(d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the court shall:

(i) require that person to submit an affidavit of impecuniosity as provided in Section 78A-2-302; and

(ii) follow the procedures and make the determinations as provided in Section 78A-2-304.

(e) The child's parents, parent, or legal guardian may appeal the court's determination, under Subsection (6)(c), of fees, costs, and expenses.

(7) An attorney guardian ad litem appointed under this section, when serving in the scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

(b) If the minor's wishes differ from the attorney's determination of the minor's best interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in addition to presenting the attorney's determination of the minor's best interest.

(c) A difference between the minor's wishes and the attorney's determination of

best interest may not be considered a conflict of interest for the attorney.

(d) The guardian ad litem shall disclose the wishes of the child unless the child:

(i) instructs the guardian ad litem to not disclose the child's wishes; or

(ii) has not expressed any wishes.

(e) The court may appoint one attorney guardian ad litem to represent the best interests of more than one child of a marriage.

(9) An attorney guardian ad litem shall be provided access to all Division of Child and Family Services records regarding the minor at issue and the minor's family.

(10) (a) An attorney guardian ad litem shall conduct an independent investigation regarding the minor at issue, the minor's family, and what constitutes the best interest of the minor.

(b) An attorney guardian ad litem may interview the minor's Division of Child and Family Services caseworker, but may not:

(i) rely exclusively on the conclusions and findings of the Division of Child and Family Services; or

(ii) except as provided in Subsection (10)(c), conduct a visit with the client in conjunction with the visit of a Division of Child and Family Services caseworker.

(c) A guardian ad litem may meet with a client during a team meeting, court hearing, or similar venue when a Division of Child and Family Services caseworker is present for a purpose other than the guardian ad litem's visit with the client.

(11) (a) An attorney guardian ad litem shall maintain current and accurate records regarding:

(i) the number of times the attorney has had contact with each minor; and

(ii) the actions the attorney has taken in representation of the minor's best interest.

(b) In every hearing where the guardian ad litem makes a recommendation regarding the best interest of the child, the court shall require the guardian ad litem to disclose the factors that form the basis of the recommendation.

(12) (a) Except as provided in Subsection (12)(b), all records of an attorney guardian ad litem are confidential and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Consistent with Subsection (12)(d), all records of an attorney guardian ad litem:

(i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers; and

(ii) shall be released to the Legislature.

(c) (i) Except as provided in Subsection (12)(c)(ii), records released in accordance with Subsection (12)(b) shall be maintained as confidential by the Legislature.

(ii) Notwithstanding Subsection (12)(c)(i), the Office of the Legislative Auditor General may include summary data and nonidentifying information in its audits and reports to the Legislature.

(d) (i) Subsection (12)(b) constitutes an exception to Rules of Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4), because of:

(A) the unique role of an attorney guardian ad litem described in Subsection (8);

and

(B) the state's role and responsibility:

(I) to provide a guardian ad litem program; and

(II) as parens patriae, to protect minors.

(ii) A claim of attorney-client privilege does not bar access to the records of an attorney guardian ad litem by the Legislature, through legislative subpoena.

Amended by Chapter 293, 2012 General Session

78A-6-1001. Jurisdiction over adults for offenses against minors -- Proof of delinquency not required for conviction.

(1) The court shall have jurisdiction, concurrent with the district court or justice court otherwise having subject matter jurisdiction, to try adults for the following offenses committed against minors:

(a) unlawful sale or furnishing of an alcoholic product to minors in violation of Section 32B-4-403;

(b) failure to report abuse or neglect, as required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;

(c) harboring a runaway in violation of Section 62A-4a-501;

(d) misdemeanor custodial interference in violation of Section 76-5-303;

(e) contributing to the delinquency of a minor in violation of Section 76-10-2301; and

(f) failure to comply with compulsory education requirements in violation of Section 53A-11-101.5.

(2) It is not necessary for the minor to be found to be delinquent or to have committed a delinquent act for the court to exercise jurisdiction under Subsection (1).

Amended by Chapter 276, 2010 General Session

78A-6-1002. Practice and procedure -- Jury trial.

(1) The county attorney or district attorney, as provided under Sections 17-18-1 and 17-18-1.7, shall prosecute any case brought under this part.

(2) Proceedings under this part shall be governed by the statutes and rules governing criminal proceedings in the district court, except the court may, and on stipulation of the parties, shall, transfer the case to the district court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-1003. Costs and expenses of trial.

The fees and expenses, the cost of publication of summons, and the expense of a trial of an adult, when approved by the court, are paid by the state, except prosecution costs and public defender costs are paid by the county where the hearing or trial is held.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-1101. Violation of order of court -- Contempt -- Penalty.

(1) Any person who willfully violates or refuses to obey any order of the court may be proceeded against for contempt of court.

(2) Any person 18 years of age or older found in contempt of court may be punished in accordance with Section 78B-6-310.

(3) (a) Any person younger than 18 years of age found in contempt of court may be punished by any disposition permitted under Section 78A-6-117, except for commitment to a secure facility.

(b) The court may stay or suspend all or part of the punishment upon compliance with conditions imposed by the court.

(4) The court may enforce orders of fines, fees, or restitution through garnishments, wage withholdings, supplementary proceedings, or executions.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-1102. Amendment of petition -- When authorized -- Continuance of proceedings.

When it appears during the course of any proceeding in a minor's case that the evidence presented points to material facts not alleged in the petition, the court may consider the additional or different matters raised by the evidence, if the parties consent. The court on motion of any interested party or on its own motion shall direct that the petition be amended to conform to the evidence. If the amendment results in a substantial departure from the facts originally alleged, the court shall grant such continuance as justice may require.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-1103. Modification or termination of custody order or decree -- Grounds -- Procedure.

(1) A parent or guardian of any child whose legal custody has been transferred by the court to an individual, agency, or institution, except a secure youth corrections facility, may petition the court for restoration of custody or other modification or revocation of the court's order, on the ground that a change of circumstances has occurred which requires such modification or revocation in the best interest of the child or the public.

(2) The court shall make a preliminary investigation. If the court finds that the alleged change of circumstances, if proved, would not affect the decree, it may dismiss the petition. If the court finds that a further examination of the facts is needed, or if the court on its own motion determines that the decree should be reviewed, it shall conduct a hearing. Notice shall be given to all persons concerned. At the hearing, the court may enter an order continuing, modifying, or terminating the decree.

(3) A petition by a parent may not be filed under this section after the parent's parental rights have been terminated in accordance with Part 5, Termination of Parental Rights Act.

(4) An individual, agency, or institution vested with legal custody of a child may petition the court for a modification of the custody order on the ground that the change is necessary for the welfare of the child or in the public interest. The court shall proceed

upon the petition in accordance with Subsections (1) and (2).

Amended by Chapter 208, 2011 General Session

78A-6-1104. When photographs, fingerprints, or HIV infection tests may be taken -- Distribution -- Expungement.

(1) The Division of Juvenile Justice Services shall take a photograph and fingerprints of all minors 14 years of age or older who are admitted to a detention facility operated by the Division of Juvenile Justice Services for the alleged commission of an offense that would be a felony if the minor were 18 years of age or older.

(2) The Juvenile Court shall order a minor 14 years of age or older to have the minor's fingerprints taken at a detention facility operated by the Division of Juvenile Justice Services or a local law enforcement agency if the minor is:

(a) adjudicated for an offense that would be a class A misdemeanor if the minor were 18 years of age or older; or

(b) adjudicated for an offense that would be a felony if the minor were 18 years of age or older and the minor was not admitted to a detention facility operated by the Division of Juvenile Justice Services.

(3) The Juvenile Court shall take a photograph of all minors 14 years of age or older who are adjudicated for an offense that would be a felony or a class A misdemeanor if the minor were 18 years of age or older.

(4) Fingerprints shall be forwarded to the Bureau of Criminal Identification and may be stored by electronic medium.

(5) HIV testing shall be conducted on a minor who is taken into custody after having been adjudicated to have violated state law prohibiting a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, upon the request of the victim, the parent or guardian of a victim younger than 14 years of age, or the legal guardian of the alleged victim if the victim is a vulnerable adult as defined in Section 62A-3-301.

(6) HIV testing shall be conducted on a minor against whom a petition has been filed or a pickup order has been issued for commission of any offense under Title 76, Chapter 5, Part 4, Sexual Offenses, upon the request of the victim, the parent or guardian of a victim younger than 14 years of age, or the legal guardian of the alleged victim if the victim is a vulnerable adult as defined in Section 62A-3-301, and regarding which:

(a) a judge has signed an accompanying arrest warrant, pickup order, or any other order based upon probable cause regarding the alleged offense; and

(b) the judge has found probable cause to believe that the alleged victim has been exposed to HIV infection as a result of the alleged offense.

(7) HIV tests, photographs, and fingerprints may not be taken of a child younger than 14 years of age without the consent of the court.

(8) (a) Photographs taken under this section may be distributed or disbursed to the following individuals or agencies:

(i) state and local law enforcement agencies;

(ii) the judiciary; and

(iii) the Division of Juvenile Justice Services.

(b) Fingerprints may be distributed or disbursed to the following individuals or

agencies:

(i) state and local law enforcement agencies;

(ii) the judiciary;

(iii) the Division of Juvenile Justice Services; and

(iv) agencies participating in the Western Identification Network.

(9) When a minor's juvenile record is expunged, all photographs and other records as ordered shall upon court order be destroyed by the law enforcement agency. Fingerprint records may not be destroyed.

Amended by Chapter 369, 2012 General Session

78A-6-1105. Expungement of juvenile court record -- Petition -- Procedure.

(1) (a) A person who has been adjudicated under this chapter may petition the court for the expungement of the person's juvenile court record and any related records in the custody of a state agency, if:

(i) the person has reached 18 years of age; and

(ii) one year has elapsed from the date of termination of the continuing jurisdiction of the juvenile court or, if the person was committed to a secure youth corrections facility, one year from the date of the person's unconditional release from the custody of the Division of Juvenile Justice Services.

(b) The court may waive the requirements in Subsection (1)(a), if the court finds, and states on the record, the reason why the waiver is appropriate.

(c) The petitioner shall include in the petition any agencies known or alleged to have any documents related to the offense for which expungement is being sought.

(d) The petitioner shall include with the petition the original criminal history report obtained from the Bureau of Criminal Identification in accordance with the provisions of Subsection 53-10-108(8).

(e) The petitioner shall send a copy of the petition to the county attorney or, if within a prosecution district, the district attorney.

(f) (i) Upon the filing of a petition, the court shall:

(A) set a date for a hearing;

(B) notify the county attorney or district attorney, and the agency with custody of the records at least 30 days prior to the hearing of the pendency of the petition; and

(C) notify the county attorney or district attorney, and the agency with records the petitioner is asking the court to expunge of the date of the hearing.

(ii) The court shall provide a victim with the opportunity to request notice of a petition for expungement. A victim shall receive notice of a petition for expungement at least 30 days prior to the hearing if, prior to the entry of an expungement order, the victim or, in the case of a child or a person who is incapacitated or deceased, the victim's next of kin or authorized representative, submits a written and signed request for notice to the court in the judicial district in which the crime occurred or judgment was entered. The notice shall include a copy of the petition and statutes and rules applicable to the petition.

(2) (a) At the hearing, the county attorney or district attorney, a victim, and any other person who may have relevant information about the petitioner may testify.

(b) In deciding whether to grant a petition for expungement, the court shall

consider whether the rehabilitation of the petitioner has been attained to the satisfaction of the court, taking into consideration the petitioner's response to programs and treatment, the petitioner's behavior subsequent to adjudication, and the nature and seriousness of the conduct.

(c) The court may order sealed all petitioner's records under the control of the juvenile court and any of petitioner's records under the control of any other agency or official pertaining to the petitioner's adjudicated juvenile court cases, including relevant related records contained in the Management Information System created by Section 62A-4a-1003 and the Licensing Information System created by Section 62A-4a-1005, if the court finds that:

(i) the petitioner has not, since the termination of the court's jurisdiction or his unconditional release from the Division of Juvenile Justice Services, been convicted of a:

(A) felony; or

(B) misdemeanor involving moral turpitude;

(ii) no proceeding involving a felony or misdemeanor is pending or being instituted against the petitioner; and

(iii) a judgment for restitution entered by the court on the conviction for which the expungement is sought has been satisfied.

(3) The petitioner shall be responsible for service of the order of expungement to all affected state, county, and local entities, agencies, and officials. To avoid destruction or sealing of the records in whole or in part, the agency or entity receiving the expungement order shall only expunge all references to the petitioner's name in the records pertaining to the petitioner's adjudicated juvenile court cases.

(4) Upon the entry of the order, the proceedings in the petitioner's case shall be considered never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of the records may thereafter only be permitted by the court upon petition by the person who is the subject of the records, and only to persons named in the petition.

(5) The court may not expunge a juvenile court record if the record contains an adjudication of:

(a) Section 76-5-202, aggravated murder; or

(b) Section 76-5-203, murder.

(6) (a) A person whose juvenile court record consists solely of nonjudicial adjustments as provided in Section 78A-6-602 may petition the court for expungement of the person's record if the person:

(i) has reached 18 years of age; and

(ii) has completed the conditions of the nonjudicial adjustments.

(b) The court shall, without a hearing, order sealed all petitioner's records under the control of the juvenile court and any of petitioner's records under the control of any other agency or official pertaining to the petitioner's nonjudicial adjustments.

Amended by Chapter 148, 2009 General Session

78A-6-1106. Child support obligation when custody of a child is vested in an individual or institution.

(1) When legal custody of a child is vested by the court in a secure youth corrections facility or any other state department, division, or agency other than the child's parents, or if the guardianship of the child has been granted to another party and an agreement for a guardianship subsidy has been signed by the guardian, the court shall order the parents, a parent, or any other obligated person to pay child support for each month the child is in custody. In the same proceeding the court shall inform the parents, a parent, or any other obligated person, verbally and in writing, of the requirement to pay child support in accordance with Title 78B, Chapter 12, Utah Child Support Act.

(2) If legal custody of a child is vested by the court in a secure youth corrections facility, or any other state department, division, or agency, the court may refer the establishment of a child support order to the Office of Recovery Services. The referral shall be sent to the Office of Recovery Services within three working days of the hearing. Support obligation amounts shall be set by the Office of Recovery Services in accordance with Title 78B, Chapter 12, Utah Child Support Act.

(3) If referred to the Office of Recovery Services pursuant to Subsection (2), the court shall also inform the parties that they are required to contact the Office of Recovery Services within 30 days of the date of the hearing to establish a child support order and the penalty in Subsection (5) for failing to do so. If there is no existing child support order for the child, the liability for support shall accrue beginning on the 61st day following the hearing that occurs the first time the court vests custody of the child in a secure youth corrections facility, or any other state department, division, or agency other than his parents.

(4) If a child is returned home and legal custody is subsequently vested by the court in a secure youth corrections facility or any other state department, division, or agency other than his parents, the liability for support shall accrue from the date the child is subsequently removed from the home, including time spent in detention or sheltered care.

(5) (a) If the parents, parent, or other obligated person meets with the Office of Recovery Services within 30 days of the date of the hearing, the child support order may not include a judgment for past due support for more than two months.

(b) Notwithstanding Subsection (5)(a), the court may order the liability of support to begin to accrue from the date of the proceeding referenced in Subsection (1) if:

(i) the parents, parent, or any other person obligated fails to meet with the Office of Recovery Services within 30 days after being informed orally and in writing by the court of that requirement; and

(ii) the Office of Recovery Services took reasonable steps under the circumstances to contact the parents, parent, or other person obligated within the subsequent 30-day period to facilitate the establishment of the child support order.

(c) For purposes of Subsection (5)(b)(ii), the Office of Recovery Services shall be presumed to have taken reasonable steps if the office:

(i) has a signed, returned receipt for a certified letter mailed to the address of the parents, parent, or other obligated person regarding the requirement that a child support order be established; or

(ii) has had a documented conversation, whether by telephone or in person, with the parents, parent, or other obligated person regarding the requirement that a child

support order be established.

(6) In collecting arrears, the Office of Recovery Services shall comply with Section 62A-11-320 in setting a payment schedule or demanding payment in full.

(7) Unless otherwise ordered, the parents or other person shall pay the child support to the Office of Recovery Services. The clerk of the court, the Office of Recovery Services, or the Department of Human Services and its divisions shall have authority to receive periodic payments for the care and maintenance of the child, such as Social Security payments or railroad retirement payments made in the name of or for the benefit of the child.

(8) No court order under this section against a parent or other person shall be entered, unless notice of hearing has been served within the state, a voluntary appearance is made, or a waiver of service given. The notice shall specify that a hearing with respect to the financial support of the child will be held.

(9) An existing child support order payable to a parent or other obligated person shall be assigned to the Department of Human Services as provided in Section 62A-1-117.

(10) (a) Subsections (3) through (9) shall not apply if legal custody of a child is vested by the court in an individual.

(b) If legal custody of a child is vested by the court in an individual, the court may order the parents, a parent, or any other obligated person to pay child support to the individual. In the same proceeding the court shall inform the parents, a parent, or any other obligated person, verbally and in writing, of the requirement to pay child support in accordance with Title 78B, Chapter 12, Utah Child Support Act.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-1107. Transfer of continuing jurisdiction to other district.

Jurisdiction over a minor on probation or under protective supervision, or of a minor who is otherwise under the continuing jurisdiction of the court, may be transferred by the court to the court of another district, if the receiving court consents, or upon direction of the chair of the Board of Juvenile Court Judges. The receiving court has the same powers with respect to the minor that it would have if the proceedings originated in that court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-1108. New hearings authorized -- Grounds and procedure.

(1) A parent, guardian, or custodian of any child adjudicated under this chapter, or any minor who is at least 18 years old, or adult affected by a decree in a proceeding under this chapter, may at any time petition the court for a new hearing on the ground that new evidence which was not known and could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered.

(2) If it appears to the court that there is new evidence which might affect its decree, it shall order a new hearing, enter a decree, and make any disposition of the case warranted by all the facts and circumstances and the best interests of the minor.

(3) This section does not apply to a minor's case handled under the provisions of Section 78A-6-702.

Amended by Chapter 208, 2011 General Session

78A-6-1109. Appeals.

(1) An appeal to the Court of Appeals may be taken from any order, decree, or judgment of the juvenile court.

(2) Appeals of right from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings, shall be taken within 15 days from entry of the order, decree, or judgment appealed from. In addition, the notice of appeal must be signed by appellant's counsel, if any, and by appellant, unless the appellant is a child or state agency. If an appellant fails to timely sign a notice of appeal, the appeal shall be dismissed.

(3) The disposition order shall include the following information:

(a) notice that the right to appeal is time sensitive and must be taken within 15 days from entry of the order, decree, or judgement appealed from;

(b) the right to appeal within the specified time limits;

(c) the need for the signature of the parties on a notice of appeal in appeals from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings; and

(d) the need for parties to maintain regular contact with their counsel and to keep all other parties and the appellate court informed of their whereabouts.

(4) If the parties are not present in the courtroom, the court shall mail a written statement containing the information provided in Subsection (3) to the parties at their last known address.

(5) (a) The court shall inform the parties' counsel at the conclusion of the proceedings that, if an appeal is filed, they must represent their clients throughout the appellate process unless relieved of that obligation by the juvenile court upon a showing of extraordinary circumstances.

(b) Until the petition on appeal is filed, claims of ineffective assistance of counsel do not constitute extraordinary circumstances. If a claim is raised by trial counsel or a party, it must be included in the petition on appeal.

(6) During the pendency of an appeal from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings, parties shall maintain regular contact with their counsel, if any, and keep all other parties and the appellate court informed of their whereabouts.

(7) In all other appeals of right, the appeal shall be taken within 30 days from the entry of the order, decree, or judgment appealed from and the notice of appeal must be signed by appellant's counsel, if any, or by appellant. The attorney general shall represent the state in all appeals under this chapter.

(8) Unless the juvenile court stays its order, the pendency of an appeal does not stay the order or decree appealed from in a minor's case, unless otherwise ordered by the Court of Appeals, if suitable provision for the care and custody of the minor involved is made pending the appeal.

(9) The name of the minor may not appear on the record on appeal.

Amended by Chapter 208, 2011 General Session

78A-6-1110. Cooperation of political subdivisions and public or private agencies and organizations.

Every county, municipality, and school district, the Division of Child and Family Services, the Department of Health, the Division of Substance Abuse and Mental Health, the State Board of Education, and state and local law enforcement officers, shall render all assistance and cooperation within their jurisdiction and power to further the objects of this chapter, and the juvenile courts are authorized to seek the cooperation of all agencies and organizations, public or private, whose object is the protection or aid of minors.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-1111. Right to counsel -- Appointment of counsel for indigent -- Cost -- Court hearing to determine compelling reason to appoint a noncontracting attorney.

(1) (a) The parents, guardian, custodian, and the minor, if competent, shall be informed that they have the right to be represented by counsel at every stage of the proceedings. They have the right to employ counsel of their own choice and if any of them requests an attorney and is found by the court to be indigent, counsel shall be appointed by the court, subject to the provisions of this section. The court may appoint counsel without a request if it considers representation by counsel necessary to protect the interest of the minor or of other parties.

(b) The cost of appointed counsel for an indigent minor or other indigent party, including the cost of counsel and expense of appeal, shall be paid by the county in which the trial court proceedings are held. Counties may levy and collect taxes for these purposes.

(c) The court shall take into account the income and financial ability to retain counsel of the parents or guardian of a child in determining the indigency of the child.

(2) If the state or county responsible to provide legal counsel for an indigent under Subsection (1)(b) has arranged by contract to provide services, the court if it has received notice or a copy of such contract shall appoint the contracting attorney as legal counsel to represent that indigent.

(3) In the absence of contrary contractual provisions regarding the selection and appointment of parental defense counsel, the court shall select and appoint the attorney or attorneys if:

(a) the contract for indigent legal services is with multiple attorneys; or

(b) the contract is with an additional attorney or attorneys in the event of a conflict of interest.

(4) If the court considers the appointment of a noncontracting attorney to provide legal services to an indigent despite the existence of an indigent legal services contract and the court has a copy or notice of such contract, before the court may make the appointment, it shall:

(a) set the matter for a hearing;

(b) give proper notice to the attorney general and the Child Welfare Parental Defense Program created in Section 63A-11-103; and

(c) make findings that there is a compelling reason to appoint a noncontracting attorney before it may make such appointment.

(5) The indigent's mere preference for other counsel may not be considered a compelling reason justifying the appointment of a noncontracting attorney.

(6) The court may order a minor, parent, guardian, or custodian for whom counsel is appointed and the parents or guardian of any child for whom counsel is appointed to reimburse the county for some or all of the cost of appointed counsel.

(7) (a) Except as provided in Subsections (7)(b) and (c), the court shall order a minor, parent, guardian, or custodian for whom counsel is appointed and the parents or guardian of any child for whom counsel is appointed to reimburse the county for the cost of appointed counsel arising from any work of counsel that is not primarily directed at the state or the guardian ad litem.

(b) The court may not order reimbursement of the county pursuant to Subsection (7)(a) for the cost of appointed counsel arising from any work of counsel:

(i) that is specifically undertaken to defend against the filing of a petition to terminate parental rights, regardless of who filed the petition; and

(ii) that is undertaken after the petition to terminate parental rights has been filed.

(c) The state, or an agency of the state, may not be ordered to reimburse the county pursuant to Subsection (7)(a).

Amended by Chapter 265, 2011 General Session

78A-6-1112. Exchange of information with agency or institution having legal custody -- Transfer of minor to state prison or other adult facility prohibited.

(1) Whenever legal custody of a minor is vested in an institution or agency, the court shall transmit with the court order copies of the social study, any clinical reports, and other information pertinent to the care and treatment of the minor. The institution or agency shall give the court any information concerning the minor that the court may at any time require.

(2) The Division of Juvenile Justice Services or any other institution or agency to whom a minor is committed under Section 78A-6-117 may not transfer custody of the minor to the state prison or any other institution for the correction of adult offenders.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-1113. Property damage caused by a minor -- Liability of parent or legal guardian -- Criminal conviction or adjudication for criminal mischief or criminal trespass not a prerequisite for civil action under chapter -- When parent or guardian not liable.

(1) The parent or legal guardian having legal custody of the minor is liable for damages sustained to property not to exceed $2,000 when:

(a) the minor intentionally damages, defaces, destroys, or takes the property of another;

(b) the minor recklessly or willfully shoots or propels a missile, or other object at or against a motor vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether moving or standing; or

(c) the minor intentionally and unlawfully tampers with the property of another and thereby recklessly endangers human life or recklessly causes or threatens a substantial interruption or impairment of any public utility service.

(2) The parent or legal guardian having legal custody of the minor is liable for damages sustained to property not to exceed $5,000 when the minor commits an offense under Section (1):

(a) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(b) to gain recognition, acceptance, membership, or increased status with a criminal street gang.

(3) The court may make an order for the restitution authorized in this section to be paid by the minor's parent or guardian as part of the minor's disposition order.

(4) As used in this section, property damage described under Subsection (1)(a) or (c), or Subsection (2), includes graffiti, as defined in Section 76-6-107.

(5) A court may waive part or all of the liability for damages under this section by the parent or legal guardian if the offender is adjudicated in the juvenile court under Section 78A-6-117 only upon stating on the record that the court finds:

(a) good cause; or

(b) the parent or legal guardian:

(i) made a reasonable effort to restrain the wrongful conduct; and

(ii) reported the conduct to the property owner involved or the law enforcement agency having primary jurisdiction after the parent or guardian knew of the minor's unlawful act.

(6) A report is not required under Subsection (4)(b) from a parent or legal guardian if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of the property owner involved.

(7) A conviction for criminal mischief under Section 76-6-106, criminal trespass under Section 76-6-206, or an adjudication under Section 78A-6-117 is not a condition precedent to a civil action authorized under Subsection (1) or (2).

(8) A parent or guardian is not liable under Subsection (1) or (2) if the parent or guardian made a reasonable effort to supervise and direct their minor child, or, in the event the parent or guardian knew in advance of the possible taking, injury, or destruction by their minor child, made a reasonable effort to restrain the child.

Amended by Chapter 208, 2011 General Session

78A-6-1201. Title.

This part is known as the "Utah Youth Court Diversion Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-1202. Definitions.

(1) "Adult" means a person 18 years of age or older.

(2) "Gang activity" means any criminal activity that is conducted as part of an organized youth gang. It includes any criminal activity that is done in concert with other gang members, or done alone if it is to fulfill gang purposes. "Gang activity" does not include graffiti.

(3) "Minor offense" means any unlawful act that is a status offense or would be a class B or C misdemeanor, infraction, or violation of a municipal or county ordinance if the youth were an adult. "Minor offense" does not include:

(a) class A misdemeanors;

(b) felonies of any degree;

(c) any offenses that are committed as part of gang activity;

(d) any of the following offenses which would carry mandatory dispositions if referred to the juvenile court under Section 78A-6-606:

(i) a second violation of Section 32B-4-409, Unlawful Purchase, Possession or Consumption by Minors -- Measurable Amounts in Body;

(ii) a violation of Section 41-6a-502, Driving Under the Influence;

(iii) a violation of Section 58-37-8, Controlled Substances Act;

(iv) a violation of Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(v) a violation of Title 58, Chapter 37b, Imitation Controlled Substances Act; or

(vi) a violation of Section 76-9-701, Intoxication; or

(e) any offense where a dangerous weapon, as defined in Subsection 76-1-601(5), is used in the commission of the offense.

(4) "Sponsoring entity" means any political subdivision of the state, including a school or school district, juvenile court, law enforcement agency, prosecutor's office, county, city, or town.

(5) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(6) "Youth" means a person under the age of 18 years or who is 18 but still attending high school.

Amended by Chapter 276, 2010 General Session

78A-6-1203. Youth Court -- Authorization -- Referral.

(1) Youth Court is a diversion program which provides an alternative disposition for cases involving juvenile offenders in which youth participants, under the supervision of an adult coordinator, may serve in various capacities within the courtroom, acting in the role of jurors, lawyers, bailiffs, clerks, and judges.

(a) Youth who appear before youth courts have been identified by law enforcement personnel, school officials, a prosecuting attorney, or the juvenile court as having committed acts which indicate a need for intervention to prevent further development toward juvenile delinquency, but which appear to be acts that can be appropriately addressed outside the juvenile court process.

(b) Youth Courts may only hear cases as provided for in this part.

(c) Youth Court is a diversion program and not a court established under the Utah Constitution, Article VIII.

(2) Any person may refer youth to a Youth Court for minor offenses. Once a referral is made, the case shall be screened by an adult coordinator to determine

whether it qualifies as a Youth Court case.

(3) Youth Courts have authority over youth:

(a) referred for a minor offense or offenses, or who are granted permission for referral under this part;

(b) who, along with a parent, guardian, or legal custodian, voluntarily and in writing, request Youth Court involvement;

(c) who admit having committed the referred offense;

(d) who, along with a parent, guardian, or legal custodian, waive any privilege against self-incrimination and right to a speedy trial; and

(e) who, along with their parent, guardian, or legal custodian, agree to follow the Youth Court disposition of the case.

(4) Except with permission granted under Subsection (5), Youth Courts may not exercise authority over youth who are under the continuing jurisdiction of the juvenile court for law violations, including any youth who may have a matter pending which has not yet been adjudicated. Youth Courts may, however, exercise authority over youth who are under the continuing jurisdiction of the juvenile court as set forth in this Subsection (4) if the offense before the Youth Court is not a law violation, and the referring agency has notified the juvenile court of the referral.

(5) Youth Courts may exercise authority over youth described in Subsection (4), and over any other offense with the permission of the juvenile court and the prosecuting attorney in the county or district that would have jurisdiction if the matter were referred to juvenile court.

(6) Permission of the juvenile court may be granted by a probation officer of the court in the district that would have jurisdiction over the offense being referred to Youth Court.

(7) Youth Courts may decline to accept a youth for Youth Court disposition for any reason and may terminate a youth from Youth Court participation at any time.

(8) A youth or the youth's parent, guardian, or custodian may withdraw from the Youth Court process at any time. The Youth Court shall immediately notify the referring source of the withdrawal.

(9) The Youth Court may transfer a case back to the referring source for alternative handling at any time.

(10) Referral of a case of Youth Court may not prohibit the subsequent referral of the case to any court.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-1204. Parental involvement -- Victims -- Restitution.

(1) Every youth appearing before the Youth Court shall be accompanied by a parent, guardian, or legal custodian.

(2) Victims shall have the right to attend hearings and be heard.

(3) Any restitution due a victim of an offense shall be made in full prior to the time the case is completed by the Youth Court. Restitution shall be agreed upon between the youth and victim.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-1205. Dispositions.

(1) Youth Court dispositional options include:

(a) compensatory service;

(b) participation in law-related educational classes, appropriate counseling, treatment, or other educational programs;

(c) providing periodic reports to the Youth Court;

(d) participating in mentoring programs;

(e) participation by the youth as a member of a Youth Court;

(f) letters of apology;

(g) essays; and

(h) any other disposition considered appropriate by the Youth Court and adult coordinator.

(2) Youth Courts may not impose a term of imprisonment or detention and may not impose fines.

(3) Youth Court dispositions shall be completed within 180 days from the date of referral.

(4) Youth Court dispositions shall be reduced to writing and signed by the youth and a parent, guardian, or legal custodian indicating their acceptance of the disposition terms.

(5) Youth Court shall notify the referring source if a participant fails to successfully complete the Youth Court disposition. The referring source may then take any action it considers appropriate.

Amended by Chapter 356, 2009 General Session

78A-6-1206. Liability.

(1) A person or entity associated with the referral, evaluation, adjudication, disposition, or supervision of matters under this part may not be held civilly liable for any injury occurring to any person performing compensatory service or any other activity associated with a certified Youth Court unless the person causing the injury acted in a willful or wanton manner.

(2) Persons participating in a certified Youth Court shall be considered to be volunteers for purposes of Workers' Compensation and other risk-related issues.

Amended by Chapter 356, 2009 General Session

78A-6-1207. Fees.

(1) Youth Courts may require that the youth pay a reasonable fee, not to exceed $30, to participate in Youth Court. This fee may be reduced or waived by the Youth Court in exigent circumstances. This fee shall be paid to and accounted for by the sponsoring entity.

(2) Fees for classes, counseling, treatment, or other educational programs that are the disposition of the Youth Court are the responsibility of the participant.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-1208. Youth Court Board -- Membership -- Responsibilities.

(1) The Utah attorney general's office shall provide staff support and assistance to a Youth Court Board comprised of the following:

(a) the Utah attorney general or his designee;

(b) one member of the Utah Prosecution Council;

(c) one member from the Board of Juvenile Court Judges;

(d) the juvenile court administrator or his designee;

(e) one person from the Office of Juvenile Justice and Delinquency Prevention;

(f) the state superintendent of education or his designee;

(g) two representatives from Youth Courts based primarily in schools;

(h) two representatives from Youth Courts based primarily in communities;

(i) one member from the law enforcement community; and

(j) one member from the community at large.

(2) The members selected to fill the positions in Subsections (1)(a) through (f) shall jointly select the members to fill the positions in Subsections (1)(g) through (j).

(3) Members shall serve two-year staggered terms beginning July 1, 1999, except the initial terms of the members designated by Subsections (1)(a), (c), (e), and (i), and one of the members from Subsections (1)(g) and (h) shall serve one-year terms, but may be reappointed for a full two-year term upon the expiration of their initial term.

(4) The Youth Court Board shall meet at least quarterly to:

(a) set minimum standards for the establishment of Youth Courts, including an application process, membership and training requirements, and the qualifications for the adult coordinator;

(b) review certification applications; and

(c) provide for a process to recertify each Youth Court every three years.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Youth Court Board shall make rules to accomplish the requirements of Subsection (3).

(6) The Youth Court Board may deny certification or recertification, or withdraw the certification of any Youth Court for failure to comply with program requirements.

(7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) The Youth Court Board shall provide a list of certified Youth Courts to the Board of Juvenile Court Judges, all law enforcement agencies in the state, all school districts, and the Utah Prosecution Council by December 31 of each year.

Amended by Chapter 286, 2010 General Session

78A-6-1209. Establishing a Youth Court -- Sponsoring entity responsibilities.

(1) Youth Courts may be established by a sponsoring entity or by a private nonprofit entity which contracts with a sponsoring entity.

(2) The sponsoring entity shall:

(a) oversee the formation of the Youth Court;

(b) provide assistance with the application for certification from the Youth Court Board; and

(c) provide assistance for the training of Youth Court members.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-1210. School credit.

Local school boards may provide school credit for participation as a member of a Youth Court.

Renumbered and Amended by Chapter 123, 2008 General Session

78A-6-1301. Competency to proceed.

(1) Whenever a petition is filed alleging that a minor has committed an act that would be a crime if committed by an adult, a motion for an inquiry into the minor's competency may be filed. The motion shall be filed in the juvenile court where the petition is pending.

(2) The motion shall contain:

(a) a certificate that it is filed in good faith and on reasonable grounds to believe the minor is not competent to proceed;

(b) a recital of the facts, observations, and conversations with the minor that have formed the basis for the motion; and

(c) if filed by defense counsel, the motion shall contain information that can be revealed without invading the lawyer-client privilege.

(3) The motion may be based upon knowledge or information and belief and may be filed by:

(a) the minor alleged not competent to proceed;

(b) any person acting on the minor's behalf;

(c) the prosecuting attorney;

(d) the guardian ad litem; or

(e) any person having custody or supervision over the minor.

(4) The court in which a petition is pending may raise the issue of a minor's competency at any time. If raised by the court, counsel for each party shall be permitted to address the issue of competency.

Enacted by Chapter 316, 2012 General Session

78A-6-1302. Procedure -- Standard.

(1) When a motion is filed pursuant to Section 78A-6-1301 raising the issue of a minor's competency to proceed, or when the court raises the issue of a minor's competency to proceed, the juvenile court in which proceedings are pending stay all delinquency proceedings.

(2) If a motion for inquiry is opposed by either party, the court shall, prior to granting or denying the motion, hold a limited hearing solely for the purpose of

determining the sufficiency of the motion. If the court finds that the allegations of incompetency raise a bona fide doubt as to the minor's competency to proceed, it shall enter an order for an evaluation of the minor's competency to proceed, and shall set a date for a hearing on the issue of the minor's competency.

(3) After the granting of a motion, and prior to a full competency hearing, the court may order the Department of Human Services to evaluate the minor and to report to the court concerning the minor's mental condition.

(4) The minor shall be evaluated by a mental health examiner with experience in juvenile forensic evaluations and juvenile brain development, who is not involved in the current treatment of the minor. If it becomes apparent that the minor may be not competent due to an intellectual disability or related condition, the examiner shall be experienced in intellectual disability or related condition evaluations of minors.

(5) The petitioner or other party, as directed by the court, shall provide all information and materials to the examiners relevant to a determination of the minor's competency including:

(a) the motion;

(b) the arrest or incident reports pertaining to the charged offense;

(c) the minor's known delinquency history information;

(d) known prior mental health evaluations and treatments; and

(e) consistent with 20 U.S.C. Sec. 1232G (b)(1)(E)(ii)(I), records pertaining to the minor's education.

(6) The minor's parents or guardian, the prosecutor, defense attorney, and guardian ad litem, shall cooperate in providing the relevant information and materials to the examiners.

(7) In conducting the evaluation and in the report determining if a minor is competent to proceed as defined in Subsection 78A-6-105(30), the examiner shall consider the impact of a mental disorder, intellectual disability, or related condition on a minor's present capacity to:

(a) comprehend and appreciate the charges or allegations;

(b) disclose to counsel pertinent facts, events, or states of mind;

(c) comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the minor;

(d) engage in reasoned choice of legal strategies and options;

(e) understand the adversarial nature of the proceedings;

(f) manifest appropriate courtroom behavior; and

(g) testify relevantly, if applicable.

(8) In addition to the requirements of Subsection (7), the examiner's written report shall:

(a) identify the specific matters referred for evaluation;

(b) describe the procedures, techniques, and tests used in the evaluation and the purpose or purposes for each;

(c) state the examiner's clinical observations, findings, and opinions on each issue referred for evaluation by the court, and indicate specifically those issues, if any, on which the examiner could not give an opinion;

(d) state the likelihood that the minor will attain competency and the amount of time estimated to achieve it; and

(e) identify the sources of information used by the examiner and present the basis for the examiner's clinical findings and opinions.

(9) The examiner shall provide an initial report to the court, the prosecuting and defense attorneys, and the guardian ad litem, if applicable, within 30 days of the receipt of the court's order. If the examiner informs the court that additional time is needed, the court may grant, taking into consideration the custody status of the minor, up to an additional 30 days to provide the report to the court and counsel. The examiner must provide the report within 60 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the evaluation and provide the report. The report shall inform the court of the examiner's opinion concerning the competency and the likelihood of the minor to attain competency within a year. In the alternative, the examiner may inform the court in writing that additional time is needed to complete the report.

(10) Any statement made by the minor in the course of any competency evaluation, whether the evaluation is with or without the consent of the minor, any testimony by the examiner based upon any statement, and any other fruits of the statement may not be admitted in evidence against the minor in any delinquency or criminal proceeding except on an issue respecting the mental condition on which the minor has introduced evidence. The evidence may be admitted, however, where relevant to a determination of the minor's competency.

(11) Prior to evaluating the minor, examiners shall specifically advise the minor and the parents or guardian of the limits of confidentiality as provided under Subsection (10).

(12) When the report is received the court shall set a date for a competency hearing which shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause.

(13) A minor shall be presumed competent unless the court, by a preponderance of the evidence, finds the minor not competent to proceed. The burden of proof is upon the proponent of incompetency to proceed.

(14) (a) Following the hearing, the court shall determine by a preponderance of evidence whether the minor is:

(i) competent to proceed;

(ii) not competent to proceed with a substantial probability that the minor may attain competency in the foreseeable future; or

(iii) not competent to proceed without a substantial probability that the minor may attain competency in the foreseeable future.

(b) If the court enters a finding pursuant to Subsection (14)(a)(i), the court shall proceed with the delinquency proceedings.

(c) If the court enters a finding pursuant to Subsection (14)(a)(ii), the court shall proceed consistent with Section 78A-6-1303.

(d) If the court enters a finding pursuant to Subsection (14)(a)(iii), the court shall terminate the competency proceeding, dismiss the delinquency charges without prejudice, and release the minor from any custody order related to the pending delinquency proceeding, unless the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These

commitment proceedings shall be initiated within seven days after the court's order, unless the court enlarges the time for good cause shown. The minor may be ordered to remain in custody until the commitment proceedings have been concluded.

(15) If the court finds the minor not competent to proceed, its order shall contain findings addressing each of the factors in Subsection (7).

Enacted by Chapter 316, 2012 General Session

78A-6-1303. Disposition on finding of incompetency to proceed -- Subsequent hearings -- Notice to prosecuting attorneys.

(1) If the court determines that the minor is not competent to proceed, and there is a substantial likelihood that the minor may attain competency in the foreseeable future, the court shall notify the Department of Human Services of the finding, and allow the department 30 days to develop a six month attainment plan for the minor.

(2) The attainment plan shall include:

(a) any services or treatment the minor has been or is currently receiving;

(b) any additional services or treatment the minor may require to attain competency within the six month time period;

(c) an assessment of the parent, custodian, or guardian's ability to access or provide any recommended treatment or services;

(d) any special conditions or supervision that may be necessary for the safety of the minor or others during the attainment period; and

(e) the likelihood that the minor will attain competency in a six month period.

(3) The department shall provide the attainment plan to the court, prosecutor, defense attorney, and guardian ad litem at least three days prior to the competency disposition hearing.

(4) During the attainment period, the minor shall remain in the least restrictive appropriate setting.

(a) A finding of not competent to proceed does not grant authority for a court to place a minor in the custody of the department or any of its divisions, or create eligibility for services from the Division of Services for People With Disabilities.

(b) If the court orders the minor to be held in detention or placed outside of the home of the parent or guardian during the attainment period, the court shall make the following findings on the record:

(i) the placement is the least restrictive setting;

(ii) the placement is in the best interest of the minor;

(iii) the minor will have access to the services and treatment required by the attainment plan in the placement; and

(iv) the placement is necessary for the safety of the minor or others.

(5) If the minor is held in detention pending placement in a less restrictive setting, the department shall locate and transfer the minor to the alternative placement within 14 days.

(6) The court shall review the case at least once every three months to determine whether the placement is still the least restrictive appropriate placement.

(7) At any time that the minor becomes competent to proceed during the attainment period, the executive director of the Department of Human Services, or its

designee, shall notify the court, prosecutor, defense attorney, and guardian ad litem. The court shall hold a hearing with 15 business days of notice from the executive director.

(8) If at any time during the attainment period the court finds that there is not a substantial probability that the minor will attain competency in the foreseeable future, the court shall terminate the competency proceeding, dismiss the delinquency charges without prejudice, and release the minor from any custody order related to the pending delinquency proceeding, unless the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings shall be initiated within seven days after the court's order, unless the court enlarges the time for good cause shown. The minor may be ordered to remain in custody until the commitment proceedings have been concluded.

(9) During the attainment period, the court may order a hearing or rehearing at anytime on its own motion or upon recommendation of any interested party or the executive director of the Department of Human Services.

(10) At the conclusion of the attainment period, the department shall provide a report on the minor's progress towards competence. The report shall address the minor's:

(a) compliance with the attainment plan;

(b) progress towards competency based on the issues identified in the original competency evaluation;

(c) current mental disorder, intellectual disability, or related condition and need for treatment, if any; and

(d) whether the minor has attained competency, or the likelihood of the minor attaining competency and the amount of time necessary to attain it.

(11) The court on its own motion, or upon motion by either party or by the executive director, may order an updated juvenile competency evaluation to examine the minor and advise the court on the minor's current competency status and progress toward competency restoration.

(12) Within 30 days of receipt of the report, the court shall hold a hearing to determine the minor's current status. At the hearing, the burden of proving the minor is competent is on the proponent of competency. The court shall determine by a preponderance of the evidence whether the minor is competent to proceed.

(13) If the minor has not attained competency after the initial six month attainment period but is showing reasonable progress towards attainment of competency, the court may extend the attainment period up to an additional six months.

(14) If the minor does not attain competency within one year after the court initially finds the minor not competent to proceed, the court shall terminate the competency proceedings and dismiss the delinquency charges without prejudice.

Enacted by Chapter 316, 2012 General Session

78A-7-101. Creation of justice court -- Not of record -- Classes of justice.

(1) Under Article VIII, Section 1, Utah Constitution, there is created a court not of record known as the justice court. The judges of this court are justice court judges.

(2) Justice courts shall be divided into the following classes:
(a) Class I: 501 or more case filings per month;
(b) Class II: 201-500 case filings per month;
(c) Class III: 61-200 case filings per month; and
(d) Class IV: 60 or fewer case filings per month.

Amended by Chapter 205, 2012 General Session

78A-7-102. Establishment of justice courts.

(1) (a) For the purposes of this section, to "create a justice court" means to:
(i) establish a justice court; or
(ii) establish a justice court under Title 11, Chapter 13, Interlocal Cooperation Act.

(b) For the purposes of this section, if more than one municipality or county is collectively proposing to create a justice court, the class of the justice court shall be determined by the total citations or cases filed within the territorial jurisdiction of the proposed justice court.

(2) Municipalities or counties of the first or second class may create a justice court by filing a written declaration with the Judicial Council on or before July 1 at least two years prior to the effective date of the election. Upon demonstration of compliance with operating standards as established by statute and the Judicial Council, the Judicial Council shall certify the creation of the court pursuant to Section 78A-7-103.

(3) (a) Municipalities or counties of the third, fourth, or fifth class may create a justice court by demonstrating the need for the court and filing a written declaration with the Judicial Council on or before July 1 at least one year prior to the effective date of the election.

(b) A municipality or county establishing a justice court shall demonstrate to the Judicial Council that a justice court is needed. In evaluating the need for a justice court, the Judicial Council shall consider factors of population, case filings, public convenience, availability of law enforcement agencies and court support services, proximity to other courts, and any special circumstances.

(c) The Judicial Council shall certify the establishment of a justice court pursuant to Section 78A-7-103, if the council determines:
(i) a need exists;
(ii) the municipality or county has filed a timely application; and
(iii) the proposed justice court will be in compliance with all of the operating standards established by statute and the Judicial Council.

(4) (a) A municipality that has an established justice court may expand the territorial jurisdiction of its justice court by entering into an agreement pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, with one or more other municipalities, or the county in which the municipality exists.

(b) A justice court enlarged under this section may not be considered as establishing a new justice court. An expanded justice court shall demonstrate that it will be in compliance with all of the requirements of the operating standards as established by statute and the Judicial Council before the justice court expands.

(c) A municipality or county seeking to expand the territorial jurisdiction of a

justice court shall notify the Judicial Council:

(i) no later than the notice period required in Section 78A-7-123, when the expanded justice court is a result of the dissolution of one or more justice courts; or

(ii) no later than 180 days before the expanded court seeks to begin operation when the expanded justice court is a result of other circumstances.

(d) The Judicial Council shall certify the expansion of a justice court if it determines that the expanded justice court is in compliance with the operating standards established by statute and the Judicial Council.

(5) Upon request from a municipality or county seeking to create a justice court, the Judicial Council may shorten the time required between the city's or county's written declaration or election to create a justice court and the effective date of the election.

(6) The Judicial Council may by rule provide resources and procedures adequate for the timely disposition of all matters brought before the courts. The administrative office of the courts and local governments shall cooperate in allocating resources to operate the courts in the most efficient and effective manner based on the allocation of responsibility between courts of record and not of record.

Amended by Chapter 205, 2012 General Session

78A-7-103. Minimum standards of justice courts -- Authority of Judicial Council over justice courts.

(1) The Judicial Council shall ensure that:

(a) procedures include requirements that every municipality or county that establishes or maintains a justice court provide for the following minimum operating standards:

(i) a system to ensure the justice court records all proceedings with a digital audio recording device and maintains the audio recordings for a minimum of one year;

(ii) sufficient prosecutors to perform the prosecutorial duties before the justice court;

(iii) adequate funding to defend all persons charged with a public offense who are determined by the justice court to be indigent under Title 77, Chapter 32, Indigent Defense Act;

(iv) sufficient local peace officers to provide security for the justice court and to attend to the justice court when required;

(v) sufficient clerical personnel to serve the needs of the justice court;

(vi) sufficient funds to cover the cost of travel and training expenses of clerical personnel and judges at training sessions mandated by the Judicial Council;

(vii) adequate courtroom and auxiliary space for the justice court, which need not be specifically constructed for or allocated solely for the justice court when existing facilities adequately serve the purposes of the justice court; and

(viii) for each judge of its justice court, a current copy of the Utah Code, the Utah Court Rules Annotated, the justice court manual published by the state court administrator, the county, city, or town ordinances as appropriate, and other legal reference materials as determined to be necessary by the judge; and

(b) the Judicial Council's rules and procedures shall:

(i) presume that existing justice courts will be recertified at the end of each

four-year term if the court continues to meet the minimum requirements for the establishment of a new justice court; or

(ii) authorize the Judicial Council, upon request of a municipality or county or upon its own review, when a justice court does not meet the minimum requirements, to:

(A) decline recertification of a justice court;

(B) revoke the certification of a justice court;

(C) extend the time for a justice court to comply with the minimum requirements; or

(D) suspend rules of the Judicial Council governing justice courts, if the council believes suspending those rules is the appropriate administrative remedy for the justice courts of this state.

Repealed and Re-enacted by Chapter 205, 2012 General Session

78A-7-105. Territorial jurisdiction -- Voting.

(1) The territorial jurisdiction of county justice courts extends to the limits of the precinct for which the justice court is created and includes all cities or towns within the precinct, except cities where a municipal justice court exists.

(2) The territorial jurisdiction of municipal justice courts extends to the corporate limits of the municipality in which the justice court is created.

(3) Justice court judges have the same authority regarding matters within their jurisdiction as judges of courts of record.

(4) A justice court may issue all extraordinary writs and other writs as necessary to carry into effect its orders, judgments, and decrees.

(5) (a) Except as provided in this Subsection (5), a judgment rendered in a justice court does not create a lien upon any real property of the judgment debtor unless the judgment or abstract of the judgment:

(i) is recorded in the office of the county recorder of the county in which the real property of the judgment debtor is located; and

(ii) contains the information identifying the judgment debtor in the judgment or abstract of judgment as required in Subsection 78B-5-201(4) or as a separate information statement of the judgment creditor as required in Subsection 78B-5-201(5).

(b) The lien runs for eight years from the date the judgment was entered in the district court under Section 78B-5-202 unless the judgment is earlier satisfied.

(c) State agencies are exempt from the recording requirement of Subsection (5)(a).

Amended by Chapter 205, 2012 General Session

78A-7-106. Jurisdiction.

(1) Justice courts have jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed within their territorial jurisdiction by a person 18 years of age or older.

(2) Except those offenses over which the juvenile court has exclusive jurisdiction, justice courts have jurisdiction over the following class B and C misdemeanors, violation of ordinances, and infractions committed within their territorial

jurisdiction by a person 16 years of age or older:

(a) Title 23, Wildlife Resources Code of Utah;

(b) Title 41, Chapter 1a, Motor Vehicle Act;

(c) Title 41, Chapter 6a, Traffic Code;

(d) Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act;

(e) Title 41, Chapter 22, Off-Highway Vehicles;

(f) Title 73, Chapter 18, State Boating Act;

(g) Title 73, Chapter 18a, Boating - Litter and Pollution Control;

(h) Title 73, Chapter 18b, Water Safety; and

(i) Title 73, Chapter 18c, Financial Responsibility of Motorboat Owners and Operators Act.

(3) Justice Courts have jurisdiction over class C misdemeanor violations of Title 53, Chapter 3, Part 2, Driver Licensing Act.

(4) As used in this section, "the court's jurisdiction" means the territorial jurisdiction of a justice court.

(5) An offense is committed within the territorial jurisdiction of a justice court if:

(a) conduct constituting an element of the offense or a result constituting an element of the offense occurs within the court's jurisdiction, regardless of whether the conduct or result is itself unlawful;

(b) either a person committing an offense or a victim of an offense is located within the court's jurisdiction at the time the offense is committed;

(c) either a cause of injury occurs within the court's jurisdiction or the injury occurs within the court's jurisdiction;

(d) a person commits any act constituting an element of an inchoate offense within the court's jurisdiction, including an agreement in a conspiracy;

(e) a person solicits, aids, or abets, or attempts to solicit, aid, or abet another person in the planning or commission of an offense within the court's jurisdiction;

(f) the investigation of the offense does not readily indicate in which court's jurisdiction the offense occurred, and:

(i) the offense is committed upon or in any railroad car, vehicle, watercraft, or aircraft passing within the court's jurisdiction;

(ii) (A) the offense is committed on or in any body of water bordering on or within this state if the territorial limits of the justice court are adjacent to the body of water; and

(B) as used in Subsection (5)(f)(ii)(A), "body of water" includes any stream, river, lake, or reservoir, whether natural or man-made;

(iii) a person who commits theft exercises control over the affected property within the court's jurisdiction; or

(iv) the offense is committed on or near the boundary of the court's jurisdiction;

(g) the offense consists of an unlawful communication that was initiated or received within the court's jurisdiction; or

(h) jurisdiction is otherwise specifically provided by law.

(6) A justice court judge may transfer a criminal matter in which the defendant is a child to the juvenile court for further proceedings if the justice court judge determines and the juvenile court concurs that the best interests of the minor would be served by the continuing jurisdiction of the juvenile court.

(7) Justice courts have jurisdiction of small claims cases under Title 78A, Chapter 8, Small Claims Courts, if a defendant resides in or the debt arose within the territorial jurisdiction of the justice court.

Amended by Chapter 205, 2012 General Session

78A-7-118. Appeals from justice court -- Trial or hearing de novo in district court.

(1) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 30 days of:

(a) sentencing, except as provided in Subsection (3)(b); or

(b) a plea of guilty or no contest in the justice court that is held in abeyance.

(2) Upon filing a proper notice of appeal, any term of a sentence imposed by the justice court shall be stayed as provided for in Section 77-20-10 and the Rules of Criminal Procedure.

(3) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.

(4) A defendant convicted and sentenced in justice court is entitled to a hearing de novo in the district court on the following matters, if the defendant files a notice of appeal within 30 days of:

(a) an order revoking probation;

(b) an order entering a judgment of guilt pursuant to the person's failure to fulfil the terms of a plea in abeyance agreement;

(c) a sentence entered pursuant to Subsection (4)(b); or

(d) an order denying a motion to withdraw a plea.

(5) The prosecutor is entitled to a hearing de novo in the district court on:

(a) a final judgment of dismissal;

(b) an order arresting judgment;

(c) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;

(d) a judgment holding invalid any part of a statute or ordinance;

(e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence prevents continued prosecution of an infraction or class C misdemeanor;

(f) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence impairs continued prosecution of a class B misdemeanor; or

(g) an order granting a motion to withdraw a plea of guilty or no contest.

(6) A notice of appeal for a hearing de novo in the district court on a pretrial order excluding evidence under Subsection (5)(e) or (f) shall be filed within 30 days of the order excluding the evidence.

(7) Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court unless:

(a) the decision results in immediate dismissal of the case;

(b) with agreement of the parties, the district court consents to retain jurisdiction; or

(c) the defendant enters a plea of guilty or no contest in the district court.

(8) The district court shall retain jurisdiction over the case on trial de novo.

(9) The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance.

Amended by Chapter 205, 2012 General Session
Amended by Chapter 380, 2012 General Session

78A-7-120. Disposition of fines.

(1) Except as otherwise specified by this section, fines and forfeitures collected by a justice court shall be remitted, 1/2 to the treasurer of the local government responsible for the court and 1/2 to the treasurer of the local government which prosecutes or which would prosecute the violation. An interlocal agreement created pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, related to justice courts may alter the ratio provided in this section if the parties agree.

(2) (a) For violation of Title 23, Wildlife Resources Code, the court shall allocate 85% to the Division of Wildlife Resources and 15% to the general fund of the city or county government responsible for the justice court.

(b) For violation of Title 41, Chapter 22, Off-highway Vehicles, or Title 73, Chapter 18, State Boating Act, the court shall allocate 85% to the Division of Parks and Recreation and 15% to the general fund of the city or county government responsible for the justice court.

(3) The surcharge established by Section 51-9-401 shall be paid to the state treasurer.

(4) Fines, fees, court costs, and forfeitures collected by a municipal or county justice court for a violation of Section 72-7-404 or 72-7-406 regarding maximum weight limitations and overweight permits, minus court costs not to exceed the schedule adopted by the Judicial Council, shall be paid to the state treasurer and distributed to the class B and C road account.

(5) Revenue deposited in the class B and C road account pursuant to Subsection (4) is supplemental to the money appropriated under Section 72-2-107 but shall be expended in the same manner as other class B and C road funds.

(6) (a) Fines and forfeitures collected by the court for a second or subsequent violation under Section 41-6a-1713 or Subsection 72-7-409(8)(b) shall be remitted:

(i) 60% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 40% in accordance with Subsection (1).

(b) Fines and forfeitures collected by the court for a second or subsequent violation under Subsection 72-7-409(8)(c) shall be remitted:

(i) 50% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 50% in accordance with Subsection (1).

Amended by Chapter 205, 2012 General Session

78A-7-121. Funds collected -- Deposits and reports -- Special account -- Accounting.

(1) (a) Justice courts shall deposit public funds in accordance with Section

51-4-2.

(b) The city or county treasurer shall report to the city recorder or county auditor, as appropriate, the sums collected and deposited. The recorder or auditor shall then apportion and remit the collected proceeds as provided in Section 78A-7-120.

(2) Money received or collected on any civil process or order issued from a justice court shall be paid within seven days to the party entitled or authorized to receive it.

(3) (a) With the approval of the governing body a trust or revolving account may be established in the name of the justice court and the treasurer for the deposit of money collected including bail, restitution, unidentified receipts, and other money that requires special accounting.

(b) Disbursements from this account do not require the approval of the auditor, recorder, or governing body.

(c) The account shall be reconciled at least quarterly by the auditor of the governing body.

Amended by Chapter 205, 2012 General Session

78A-7-122. Security surcharge -- Application -- Deposit in restricted accounts.

(1) In addition to any fine, penalty, forfeiture, or other surcharge, a security surcharge of $40 shall be assessed on all convictions for offenses listed in the uniform bail schedule adopted by the Judicial Council and moving traffic violations.

(2) The security surcharge shall be collected and distributed pro rata with any fine collected. A fine that would otherwise have been charged may not be reduced due to the imposition of the security surcharge.

(3) Eight dollars of the security surcharge shall be remitted to the state treasurer and distributed to the Court Security Account created in Section 78A-2-602.

(4) Thirty-two dollars of the security surcharge shall be allocated as follows:

(a) the assessing court shall retain 20% of the amount collected for deposit into the general fund of the governmental entity; and

(b) 80% shall be remitted to the state treasurer to be distributed as follows:

(i) 62.5% to the treasurer of the county in which the justice court which remitted the amount is located;

(ii) 25% to the Court Security Account created in Section 78A-2-602; and

(iii) 12.5% to the Justice Court Technology, Security, and Training Account created in Section 78A-7-301.

(5) The court shall remit money collected in accordance with Title 51, Chapter 7, State Money Management Act.

Amended by Chapter 200, 2009 General Session

78A-7-123. Dissolution of justice courts.

(1) (a) The county or municipality shall obtain legislative approval to dissolve a justice court if the caseload from that court would fall to the district court upon dissolution.

(b) To obtain approval of the Legislature, the governing authority of the municipality or county shall petition the Legislature to adopt a joint resolution to approve the dissolution.

(c) The municipality or county shall provide notice to the Judicial Council.

(d) Notice of intent to dissolve a Class I or Class II justice court to the Judicial Council shall be given not later than July 1 two years prior to the general session in which the county or municipality intends to seek legislative approval.

(e) Notice of intent to dissolve a Class III or Class IV justice court to the Judicial Council shall be given not later than July 1 immediately prior to the general session in which the county or municipality intends to seek legislative approval.

(2) (a) A county or municipality shall give notice of intent to dissolve a justice court to the Judicial Council if the caseload of that court would fall to the county justice court. A municipality shall also give notice to the county of its intent to dissolve a justice court.

(b) Notice of intent to dissolve a Class I or Class II court shall be given by July 1 at least two years prior to the effective date of the dissolution.

(c) Notice of intent to dissolve a Class III or Class IV court shall be given by July 1 at least one year prior to the effective date of the dissolution.

(3) Upon request from a municipality or county seeking to dissolve a justice court, the Judicial Council may shorten the time required between the city's or county's notice of intent to dissolve a justice court and the effective date of the dissolution.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-7-201. Justice court judge eligibility -- Mandatory retirement.

(1) A justice court judge shall be:

(a) a citizen of the United States;

(b) 25 years of age or older;

(c) a resident of Utah for at least three years immediately preceding his appointment;

(d) a resident of the county in which the court is located or an adjacent county for at least six months immediately preceding appointment; and

(e) a qualified voter of the county in which the judge resides.

(2) Justice court judges are not required to be admitted to practice law in the state as a qualification to hold office but shall have at the minimum a diploma of graduation from high school or its equivalent.

(3) A justice court judge shall be a person who has demonstrated maturity of judgment, integrity, and the ability to understand and apply appropriate law with impartiality.

(4) Justice court judges shall retire upon attaining the age of 75 years.

Amended by Chapter 205, 2012 General Session

78A-7-202. Justice court judges to be appointed -- Procedure.

(1) As used in this section:

(a) "Local government executive" means:

(i) for a county:

(A) the chair of the county commission in a county operating under the county commission or expanded county commission form of county government;

(B) the county executive in a county operating under the county executive-council form of county government; and

(C) the county manager in a county operating under the council-manager form of county government; and

(ii) for a city or town:

(A) the mayor of the city or town; or

(B) the city manager, in the council-manager form of government described in Subsection 10-3b-103(6).

(b) "Local legislative body" means:

(i) for a county, the county commission or county council; and

(ii) for a city or town, the council of the city or town.

(2) There is created in each county a county justice court nominating commission to review applicants and make recommendations to the appointing authority for a justice court position. The commission shall be convened when a new justice court judge position is created or when a vacancy in an existing court occurs for a justice court located within the county.

(a) Membership of the justice court nominating commission shall be as follows:

(i) one member appointed by:

(A) the county commission if the county has a county commission form of government; or

(B) the county executive if the county has an executive-council form of government;

(ii) one member appointed by the municipalities in the counties as follows:

(A) if the county has only one municipality, appointment shall be made by the governing authority of that municipality; or

(B) if the county has more than one municipality, appointment shall be made by a municipal selection committee composed of the mayors of each municipality in the county;

(iii) one member appointed by the county bar association; and

(iv) two members appointed by the governing authority of the jurisdiction where the judicial office is located.

(b) If there is no county bar association, the member in Subsection (2)(a)(iii) shall be appointed by the regional bar association. If no regional bar association exists, the state bar association shall make the appointment.

(c) Members appointed under Subsections (2)(a)(i) and (ii) may not be the appointing authority or an elected official of a county or municipality.

(d) The nominating commission shall submit at least two names to the appointing authority of the jurisdiction expected to be served by the judge. The local government executive shall appoint a judge from the list submitted and the appointment ratified by the local legislative body.

(e) The state court administrator shall provide staff to the commission. The Judicial Council shall establish rules and procedures for the conduct of the commission.

(3) Judicial vacancies shall be advertised in a newspaper of general circulation,

through the Utah State Bar, and other appropriate means.

(4) Selection of candidates shall be based on compliance with the requirements for office and competence to serve as a judge.

(5) Once selected, every prospective justice court judge shall attend an orientation seminar conducted under the direction of the Judicial Council. Upon completion of the orientation program, the Judicial Council shall certify the justice court judge as qualified to hold office.

(6) The selection of a person to fill the office of justice court judge is effective upon certification of the judge by the Judicial Council. A justice court judge may not perform judicial duties until certified by the Judicial Council.

Amended by Chapter 205, 2012 General Session

78A-7-203. Term of office for justice court judge -- Retention.

(1) The term of a justice court judge is six years beginning the first Monday in January following the date of election.

(2) Upon the expiration of a justice court judge's term of office, the judge shall be subject to an unopposed retention election in accordance with the procedures set forth in Section 20A-12-201:

(a) in the county or counties in which the court to which the judge is appointed is located if the judge is a county justice court judge or a municipal justice court judge in a town or city of the fourth or fifth class; or

(b) in the municipality in which the court to which the judge is appointed is located if the judge is a municipal justice court judge and Subsection (2)(a) does not apply.

(3) Before each retention election, each justice court judge shall be evaluated in accordance with the performance evaluation program established in Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act.

(4) Notwithstanding Subsection (3), each justice court judge who is subject to a retention election in 2012, 2014, and 2016, and who is not a full-time justice court judge on July 1, 2012, shall be evaluated by the Judicial Performance Evaluation Commission according to the following performance standards:

(a) the justice court judge shall have at least 30 annual hours of continuing legal education for each year of the justice court judge's current term;

(b) the justice court judge may not have more than one public reprimand issued by the Judicial Conduct Commission or the Supreme Court during the justice court judge's current term; and

(c) the justice court judge may not have had any cases under advisement for more than two months.

Amended by Chapter 205, 2012 General Session

78A-7-204. Offices of justice court judges.

(1) Justice court judges holding office in:

(a) county precincts are county justice court judges; and

(b) cities or towns are municipal justice court judges.

(2) The county legislative body may establish a single precinct or divide the county into multiple precincts to create county justice courts for public convenience.

(3) (a) The governing body may create as many judicial positions as are required for the efficient administration of a justice court.

(b) If more than one judge is assigned to a court, all filings within that court shall be assigned to the judges at random unless the governing body has been authorized to create specialized judicial calendars to serve the interests of justice.

Amended by Chapter 205, 2012 General Session

78A-7-205. Required annual training -- Expenses -- Failure to attend.

(1) All justice court judges shall meet the continuing education requirements of the Judicial Council each calendar year.

(2) Successful completion of the continuing education requirement includes instruction regarding competency and understanding of constitutional provisions and laws relating to the jurisdiction of the court, rules of evidence, and rules of civil and criminal procedure as indicated by a certificate awarded by the Judicial Council.

(3) The Judicial Council shall file a formal complaint with the Judicial Conduct Commission against each justice court judge who does not comply with this section.

Amended by Chapter 205, 2012 General Session

78A-7-206. Determination of compensation and limits -- Salary survey -- Limits on secondary employment -- Prohibition on holding political or elected office -- Penalties.

(1) Every justice court judge shall be paid a fixed compensation determined by the governing body of the respective municipality or county.

(a) The governing body of the municipality or county may not set a full-time justice court judge's salary at less than 50% nor more than 90% of a district court judge's salary.

(b) The governing body of the municipality or county shall set a part-time justice court judge's salary as follows:

(i) The governing body shall first determine the full-time salary range outlined in Subsection (1)(a).

(ii) The caseload of a part-time judge shall be determined by the office of the state court administrator and expressed as a percentage of the caseload of a full-time judge.

(iii) The judge's salary shall then be determined by applying the percentage determined in Subsection (1)(b)(ii) against the salary range determined in Subsection (1)(a).

(c) A justice court judge shall receive an annual salary adjustment at least equal to the average salary adjustment for all county or municipal employees for the jurisdiction served by the judge.

(d) Notwithstanding Subsection (1)(c), a justice court judge may not receive a salary greater than 90% of the salary of a district court judge.

(e) A justice court judge employed by more than one entity as a justice court

judge, may not receive a total salary for service as a justice court judge greater than the salary of a district court judge.

(2) A justice court judge may not appear as an attorney in any:

(a) justice court;

(b) criminal matter in any federal, state, or local court; or

(c) juvenile court case involving conduct which would be criminal if committed by an adult.

(3) A justice court judge may not hold any office or employment including contracting for services in any justice agency of state government or any political subdivision of the state including law enforcement, prosecution, criminal defense, corrections, or court employment.

(4) A justice court judge may not hold any office in any political party or organization engaged in any political activity or serve as an elected official in state government or any political subdivision of the state.

(5) A justice court judge may not own or be employed by any business entity which regularly litigates in small claims court.

(6) The Judicial Council shall file a formal complaint with the Judicial Conduct Commission for each violation of this section.

Amended by Chapter 205, 2012 General Session

78A-7-207. Compensation -- Annual review and adjustment.

(1) The governing body of each municipality or county shall annually review and may adjust the compensation paid.

(2) The salary fixed for a justice court judge may not be diminished during the term for which the judge has been appointed or elected.

(3) A copy of the resolution, ordinance, or other document fixing the salary of the justice court judge and any adjustments to the document shall be furnished to the state court administrator by the governing body of the municipality or county.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-7-208. Temporary justice court judge.

When necessary, the governing body may appoint any senior justice court judge, or justice court judge currently holding office within the judicial district or in an adjacent county, to serve as a temporary justice court judge.

Amended by Chapter 205, 2012 General Session

78A-7-210. Justice court judge administrative responsibilities.

(1) Justice court judges shall comply with and ensure that court personnel comply with applicable county or municipal rules and regulations related to personnel, budgets, and other administrative functions.

(2) Failure by the judge to comply with applicable administrative county or municipal rules and regulations may be referred, by the county executive or municipal legislative body, to the state Justice Court Administrator.

(3) Repeated or willful noncompliance may be referred, by the county executive or municipal legislative body, to the Judicial Conduct Commission.

Amended by Chapter 205, 2012 General Session

78A-7-212. Place of holding court.

(1) (a) County justice court judges may hold court in any municipality within the precinct but may exercise only the jurisdiction provided by law for county justice courts.

(b) County justice court judges may also, at the direction of the county legislative body, hold court anywhere in the county as needed but may only hear cases arising within the precinct.

(2) A municipal justice court judge shall hold court in the municipality where the court is located and, as directed by the municipal governing body, at the county jail or municipal prison.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-7-213. Trial facilities -- Hours of business.

(1) A justice court judge shall conduct all official court business in a courtroom or office located in a public facility which is conducive and appropriate to the administration of justice.

(2) (a) A county justice court may, at the direction of the county legislative body, hold justice court anywhere in the county as needed but may only hear cases arising within its precinct.

(b) A municipal justice court judge shall hold court in the municipality where the court is located.

(c) Justice courts may also hold court or conduct hearings or court business in any facility or location authorized by rule of the Judicial Council.

(3) Justice courts shall be open and judicial business shall be transacted:

(a) five days per week; or

(b) no less than four days per week for at least 11 hours per day.

(4) The legislative body of the county, city, or town shall establish operating hours for the justice courts within the requirements of Subsection (3) and the code of judicial administration.

(5) The hours the courts are open shall be posted conspicuously at the courts and in local public buildings.

(6) The clerk of the court and judges of justice courts shall attend the court at regularly scheduled times.

(7) By July 1, 2011, all justice courts shall use a common case management system and disposition reporting system as specified by the Judicial Council.

Amended by Chapter 205, 2012 General Session

78A-7-215. Monthly reports to court administrator and governing body.

(1) Every justice court shall file monthly with the state court administrator a report of the judicial business of the judge. The report shall be on forms supplied by the

state court administrator.

(2) The report shall state the number of criminal and small claims actions filed, the dispositions entered, and other information as specified in the forms.

(3) A copy of the report shall be furnished by the justice court to the person or office in the county, city, or town designated by the governing body to receive the report.

Amended by Chapter 205, 2012 General Session

78A-7-301. Justice Court Technology, Security, and Training Account established -- Funding -- Uses.

There is created a restricted account in the General Fund known as the Justice Court Technology, Security, and Training Account.

(1) The state treasurer shall deposit in the account money collected from the surcharge established in Subsection 78A-6-122(3)(b)(iii).

(2) Money shall be appropriated from the account to the Administrative Office of the Courts to be used for audit, technology, security, and training needs in justice courts throughout the state.

Amended by Chapter 143, 2011 General Session

78A-8-101. Creation.

There is created a limited jurisdiction division of the district and justice courts designated small claims court.

Amended by Chapter 205, 2012 General Session

78A-8-102. Small claims -- Defined -- Counsel not necessary -- Removal from district court -- Deferring multiple claims of one plaintiff -- Supreme Court to govern procedures.

(1) A small claims action is a civil action:

(a) for the recovery of money where:

(i) the amount claimed does not exceed $10,000 including attorney fees but exclusive of court costs and interest; and

(ii) the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained; or

(b) involving interpleader under Rule 22 of the Utah Rules of Civil Procedure, in which the amount claimed does not exceed $10,000 including attorney fees but exclusive of court costs and interest.

(2) (a) A defendant in an action filed in the district court that meets the requirement of Subsection (1)(a)(i) may remove, if agreed to by the plaintiff, the action to a small claims court within the same district by:

(i) giving notice, including the small claims filing number, to the district court of removal during the time afforded for a responsive pleading; and

(ii) paying the applicable small claims filing fee.

(b) No filing fee may be charged to a plaintiff to appeal a judgment on an action removed under Subsection (2)(a) to the district court where the action was originally

filed.

(3) The judgment in a small claims action may not exceed $10,000 including attorney fees but exclusive of court costs and interest.

(4) Counter claims may be maintained in small claims actions if the counter claim arises out of the transaction or occurrence which is the subject matter of the plaintiff's claim. A counter claim may not be raised for the first time in the trial de novo of the small claims action.

(5) (a) With or without counsel, persons or corporations may litigate actions on behalf of themselves:

(i) in person; or

(ii) through authorized employees.

(b) A person or corporation may be represented in an action by an individual who is not an employee of the person or corporation and is not licensed to practice law only in accordance with the Utah rules of small claims procedure as promulgated by the Supreme Court.

(6) If a person or corporation other than a municipality or a political subdivision of the state files multiple small claims in any one court, the clerk or judge of the court may remove all but the initial claim from the court's calendar in order to dispose of all other small claims matters. Claims so removed shall be rescheduled as permitted by the court's calendar.

(7) Small claims matters shall be managed in accordance with simplified rules of procedure and evidence promulgated by the Supreme Court.

Amended by Chapter 114, 2011 General Session

78A-8-103. Assignee may not file claim.

A claim may not be filed or prosecuted in small claims court by any assignee of a claim.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-8-104. Object of small claims -- Attachment, garnishment, and execution.

(1) The hearing in a small claims action has the sole object of dispensing speedy justice between the parties. The record of small claims proceedings shall be as provided by rule of the Judicial Council.

(2) Attachment, garnishment, and execution may issue after judgment as prescribed by law, upon the payment of the fees required for those services.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-8-105. Civil filing fees.

(1) Except as provided in this section, the fees for a small claims action in justice court shall be the same as provided in Section 78A-2-301.

(2) Fees collected in small claims actions filed in municipal justice court are remitted to the municipal treasurer. Fees collected in small claims actions filed in a

county justice court are remitted to the county treasurer.

(3) The fee in the justice court for filing a notice of appeal for trial de novo in a court of record is $10. The fee covers all services of the justice court on appeal but does not satisfy the trial de novo filing fee in the court of record.

Amended by Chapter 34, 2010 General Session

78A-8-106. Appeals -- Who may take and jurisdiction.

(1) Either party may appeal the judgment in a small claims action to the district court of the county by filing a notice of appeal in the original trial court within 30 days of entry of the judgment. If the judgment in a small claims action is entered by a judge or judge pro tempore of the district court, the notice of appeal shall be filed with the district court.

(2) The appeal is a trial de novo and shall be tried in accordance with the procedures of small claims actions. A record of the trial shall be maintained. The trial de novo may not be heard by a judge pro tempore appointed under Section 78A-8-108. The decision of the trial de novo may not be appealed unless the court rules on the constitutionality of a statute or ordinance.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-8-107. Costs.

The prevailing party in any small claims action is entitled to costs of the action and also the costs of execution upon a judgment rendered therein.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-8-108. Evening hours -- Judges pro tempore.

(1) The district or justice court may request that the Supreme Court appoint a member of the Utah State Bar in good standing, with the member's consent, as judge pro tempore to hear and determine small claims at times, including evening sessions, to be set by the court.

(2) After being duly sworn, judges pro tempore shall:

(a) serve voluntarily and without compensation at the request of the court; and

(b) be extended the same immunities, and have the same powers with respect to matters within the jurisdiction of the small claims court as exercised by a regular judge.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-8-109. Report to Judiciary Interim Committee.

The Judicial Council shall present to the Judiciary Interim Committee, if requested by the committee, a report and recommendation concerning the maximum amount of small claims actions.

Amended by Chapter 51, 2011 General Session

78A-9-101. Admission to state bar -- Criminal history background checks.

(1) The Utah State Bar shall require each person applying for admission to the Utah State Bar to submit a complete set of fingerprints for the purpose of conducting a national criminal history background check.

(2) Fingerprints of applicants for admission to the Utah State Bar shall be submitted to the Department of Public Safety, Bureau of Criminal Identification to be used to conduct a criminal history background check and to the Federal Bureau of Investigation to obtain a national criminal history background check.

(3) The criminal history background information obtained from the Department of Public Safety and the national criminal history background information obtained from the Federal Bureau of Investigation pursuant to this section may be used by the Utah State Bar to determine an applicant's character, fitness, and suitability for admission to the Utah State Bar.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-9-102. Fees for certificate of admission.

The appellate courts shall receive a $50 fee for a certificate of admission as attorney and counselor, $30 of which shall be distributed by the state treasurer to the Judicial Council as a dedicated credit for the benefit of the State Law Library.

Amended by Chapter 391, 2010 General Session

78A-10-101. Title.

This chapter is known as the "Judicial Selection Act."

Enacted by Chapter 3, 2008 General Session

78A-10-102. Nomination, appointment, and confirmation of judges.

Judges for courts of record in Utah shall be nominated, appointed, and confirmed as provided in Utah Constitution Article VIII, Section 8, and this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-10-103. Procedures governing meetings of judicial nominating commissions.

(1) The Commission on Criminal and Juvenile Justice shall:

(a) in consultation with the Judicial Council, enact rules establishing procedures governing the meetings of the judicial nominating commissions in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) ensure that those procedures include:

(i) a minimum recruitment period of at least 30 days but not more than 90 days, unless fewer than nine applications are received for a judicial vacancy, in which case the recruitment period may be extended up to 30 days;

(ii) standards for maintaining the confidentiality of the applications and related documents;

(iii) standards governing the release of applicant names before nomination;

(iv) standards for destroying the records of the names of applicants, applications, and related documents upon completion of the nominating process;

(v) an opportunity for public comment concerning the nominating process, qualifications for judicial office, and individual applicants;

(vi) evaluation criteria for the selection of judicial nominees;

(vii) procedures for taking summary minutes at nominating commission meetings;

(viii) procedures for simultaneously forwarding the names of nominees to the governor, the president of the Senate, and the Office of Legislative Research and General Counsel;

(ix) standards governing a nominating commissioner's disqualification and inability to serve; and

(x) procedures that require the Administrative Office of the Courts to immediately inform the governor when a judge is removed, resigns, or retires.

(2) In determining which of the applicants are the most qualified, the nominating commissions shall determine by a majority vote of the commissioners present which of the applicants best possess the ability, temperament, training, and experience that qualifies them for the office.

(3) (a) The appellate court nominating commission shall certify to the governor a list of the seven most qualified applicants per vacancy; and

(b) trial court nominating commissions shall certify to the governor a list of the five most qualified applicants per vacancy.

(4) Nominating commissions shall ensure that the list of applicants submitted to the governor:

(a) meet the qualifications required by law to fill the office; and

(b) are willing to serve.

(5) In determining which of the applicants are the most qualified, nominating commissions may not decline to submit a candidate's name to the governor merely because:

(a) the nominating commission had declined to submit that candidate's name to the governor to fill a previous vacancy;

(b) a previous nominating commission had declined to submit that candidate's name to the governor; or

(c) that nominating commission or a previous nominating commission had submitted the applicant's name to the governor and the governor selected someone else to fill the vacancy.

(6) A judicial nominating commission may not nominate a justice or judge who was not retained by the voters for the office for which the justice or judge was defeated until after the expiration of that term of office.

(7) Judicial nominating commissions are exempt from the requirements of Title 52, Chapter 4, Open and Public Meetings Act.

Amended by Chapter 134, 2010 General Session

78A-10-104. Convening of judicial nominating commissions -- Certification

to governor of nominees -- Meetings to investigate prospective candidates.

(1) Unless a hiring freeze is implemented in accordance with Section 78A-2-113, the governor shall ensure that:

(a) the recruitment period to fill a judicial vacancy begins 235 days before the effective date of a vacancy, unless sufficient notice is not given, in which case the recruitment period shall begin within 10 days of receiving notice;

(b) the recruitment period is a minimum of 30 days but not more than 90 days, unless fewer than nine applications are received, in which case the recruitment period may be extended up to 30 days; and

(c) the chair of the judicial nominating commission having authority over the vacancy shall convene a meeting not more than 10 days after the close of the recruitment period.

(2) The time limits in Subsection (1) shall begin to run the day the hiring freeze ends.

(3) The nominating commission may:

(a) meet as necessary to perform its function; and

(b) investigate prospective candidates.

(4) Not later than 45 days after convening, the:

(a) appellate court nominating commission shall certify to the governor a list of the seven most qualified applicants per vacancy; and

(b) trial court nominating commission shall certify to the governor a list of the five most qualified applicants per vacancy.

(5) The governor shall fill the vacancy within 30 days after receiving the list of nominees.

(6) If the governor fails to fill the vacancy within 30 days of receiving the list of nominees from the nominating commission, the chief justice of the Supreme Court shall, within 20 days, appoint a person from the list of nominees certified to the governor.

(7) A nominating commission may not nominate a person who has served on a nominating commission within six months of the date that the commission was last convened.

Amended by Chapter 134, 2010 General Session
Amended by Chapter 134, 2010 General Session, (Coordination Clause)

78A-10-105. Senate confirmation of judicial appointments -- Courts of record.

(1) The Senate shall:

(a) consider and decide on each judicial appointment within 60 days of the date of appointment; and

(b) if necessary, convene itself in extraordinary session to consider a judicial appointment.

(2) If the Senate fails to approve the appointment, the office is considered vacant and a new nominating process begins.

(3) An appointment is effective upon approval of a majority of all members of the Senate.

(4) The judicial nominating commission, the governor, the chief justice, and the

Senate shall nominate and select judges based solely upon consideration of their fitness for office without regard to any partisan political considerations.

Enacted by Chapter 134, 2010 General Session

78A-10-201. Creation.

(1) There is created an Appellate Court Nominating Commission.

(2) The Appellate Court Nominating Commission shall nominate justices of the Supreme Court and judges of the Court of Appeals.

Enacted by Chapter 3, 2008 General Session

78A-10-202. Membership.

(1) The Appellate Court Nominating Commission shall consist of seven commissioners, each appointed by the governor to serve a single four-year term.

(2) Each commissioner shall:

(a) be a United States citizen;

(b) be a resident of Utah; and

(c) serve until the commissioner's successor is appointed.

(3) The governor may not appoint:

(a) a commissioner to serve successive terms;

(b) a member of the Legislature to serve as a member of the Appellate Court Nominating Commission; or

(c) more than four commissioners from the same political party to the Appellate Court Nominating Commission.

(4) (a) The Utah State Bar shall submit to the governor a list of six nominees to serve as Appellate Court Nominating Commissioners.

(b) The governor shall appoint two commissioners from the list of nominees provided by the Utah State Bar.

(c) The governor may reject the list submitted by the Utah State Bar and request a new list of nominees.

(5) The governor may not appoint more than four persons who are members of the Utah State Bar to the Appellate Court Nominating Commission.

(6) The chief justice of the Supreme Court shall appoint another member of the Judicial Council to serve as an ex officio, nonvoting member of the Appellate Court Nominating Commission.

(7) The governor shall appoint the chair of the Appellate Court Nominating Commission from among the membership.

Amended by Chapter 134, 2010 General Session

78A-10-203. Procedure.

(1) Four commissioners are a quorum.

(2) The governor shall appoint a member of the governor's staff to serve as staff to the Appellate Court Nominating Commission.

(3) The governor shall:

(a) ensure that the commission follows the rules promulgated by the Commission on Criminal and Juvenile Justice; and

(b) resolve any questions regarding those rules.

(4) A member of the commission who is also a member of the Utah State Bar may recuse himself if there is a conflict of interest that makes the member unable to serve.

Amended by Chapter 134, 2010 General Session

78A-10-204. Vacancies.

(1) The governor shall fill any vacancy in the office of Appellate Court Nominating Commission.

(2) If an appellate court nominating commissioner is disqualified or is otherwise unable to serve, the governor shall appoint a new commissioner of the same political party as the unavailable commissioner.

(3) If a vacancy occurs among commission members who are also members of the Utah State Bar, the governor shall replace that commissioner with a person from a list of nominees submitted by the Utah State Bar as provided in Section 78A-10-202.

(4) The governor shall ensure that each person who is appointed to fill any vacancy on the Appellate Court Nominating Commission, other than a vacancy caused by expiration of term, is a member of the same political party as the commissioner whom the person replaced.

(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term and may not be reappointed.

Enacted by Chapter 3, 2008 General Session

78A-10-205. Expenses -- Per diem and travel.

A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(1) Section 63A-3-106;

(2) Section 63A-3-107; and

(3) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Repealed and Re-enacted by Chapter 286, 2010 General Session

78A-10-301. Creation.

(1) There is created a Trial Court Nominating Commission for each geographical division of the trial courts of record.

(2) The Trial Court Nominating Commission shall nominate judges of the district court and the juvenile court within its geographical division.

Enacted by Chapter 3, 2008 General Session

78A-10-302. Membership.

(1) The Trial Court Nominating Commission shall consist of seven commissioners, each appointed by the governor to serve a single four-year term.

(2) Each commissioner shall:

(a) be a United States citizen;

(b) be a resident of Utah;

(c) be a resident of the geographic division to be served by the commission to which the commissioner is appointed; and

(d) serve until the commissioner's successor is appointed.

(3) The governor may not appoint:

(a) a commissioner to serve successive terms;

(b) a member of the Legislature to serve as a member of a Trial Court Nominating Commission; or

(c) more than four commissioners from the same political party to a Trial Court Nominating Commission.

(4) The governor shall appoint two commissioners from a list of nominees provided by the Utah State Bar.

(5) The Utah State Bar shall submit:

(a) six nominees from Districts 2, 3, and 4; and

(b) four nominees from Districts 1, 5, 6, 7, and 8.

(6) The governor may reject any list and request a new list of nominees.

(7) The governor may not appoint more than four persons who are members of the Utah State Bar to a Trial Court Nominating Commission.

(8) The chief justice of the Supreme Court shall appoint another member of the Judicial Council to serve as an ex officio, nonvoting member of each Trial Court Nominating Commission.

(9) The governor shall appoint the chair of each Trial Court Nominating Commission from among its membership.

Amended by Chapter 134, 2010 General Session

78A-10-303. Procedure.

(1) Four commissioners are a quorum.

(2) The governor shall appoint a member of the governor's staff to serve as staff to each Trial Court Nominating Commission.

(3) The governor shall:

(a) ensure that each Trial Court Nominating Commission follows the rules promulgated by the Commission on Criminal and Juvenile Justice; and

(b) resolve any questions regarding those rules.

(4) A member of a Trial Court Nominating Commission who is also a member of the Utah State Bar may recuse himself if there is a conflict of interest that makes the member unable to serve.

Amended by Chapter 134, 2010 General Session

78A-10-304. Vacancies.

(1) The governor shall fill any vacancy on the Trial Court Nominating

Commission.

(2) If a commissioner is disqualified or otherwise unable to serve, the governor shall appoint a new commissioner of the same political party as the unavailable commissioner.

(3) If a vacancy occurs among commission members who are also members of the Utah State Bar, the governor shall replace that commissioner with a person from a list of nominees submitted by the Utah State Bar as provided in Section 78A-10-302.

(4) The governor shall ensure that each person who is appointed to fill any vacancy in the office of commissioner, other than a vacancy caused by expiration of term, is a member of the same political party as the commissioner whom the person replaced.

(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term of the commissioner being replaced and may not be reappointed.

Enacted by Chapter 3, 2008 General Session

78A-10-305. Expenses -- Per diem and travel.

A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(1) Section 63A-3-106;

(2) Section 63A-3-107; and

(3) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Repealed and Re-enacted by Chapter 286, 2010 General Session

78A-11-101. Creation.

In accordance with Article VIII, Section 13 of the Utah Constitution, a Judicial Conduct Commission is created.

Enacted by Chapter 3, 2008 General Session

78A-11-102. Definitions.

As used in this chapter:

(1) "Commission" means the Judicial Conduct Commission established by Utah Constitution Article VIII, Section 13 and this chapter.

(2) (a) "Complaint" includes:

(i) a written complaint against a judge; or

(ii) an allegation based on reliable information received in any form, from any source, that alleges, or from which a reasonable inference can be drawn that a judge is in violation of any provision of Utah Constitution Article VIII, Section 13.

(b) "Complaint" does not include an allegation initiated by the commission or its staff.

(3) "Investigation" means an inquiry into an allegation of misconduct, including a search for and examination of evidence concerning the allegations, which begins upon

the receipt of a complaint and is completed when either the complaint is dismissed by a majority vote of the commission or when an order is sent to the Supreme Court for its review in accordance with Utah Constitution Article VIII, Section 13.

(4) "Judge" includes the chief justice of the Supreme Court, a justice of the Supreme Court, an appellate court judge, a district court judge, an active senior judge, a juvenile court judge, a justice court judge, an active senior justice court judge, and a judge pro tempore of any court of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-11-103. Judicial Conduct Commission -- Members -- Terms -- Vacancies -- Voting -- Power of chair.

(1) The membership of the commission consists of the following 11 members:

(a) two members of the House of Representatives to be appointed by the speaker of the House of Representatives for a four-year term, not more than one of whom may be of the same political party as the speaker;

(b) two members of the Senate to be appointed by the president of the Senate for a four-year term, not more than one of whom may be of the same political party as the president;

(c) two members of, and in good standing with, the Utah State Bar, who shall be appointed by a majority of the Utah Supreme Court for a four-year term, none of whom may reside in the same judicial district;

(d) three persons not members of the Utah State Bar, who shall be appointed by the governor, with the consent of the Senate, for four-year terms, not more than two of whom may be of the same political party as the governor; and

(e) two judges to be appointed by a majority of the Utah Supreme Court for a four-year term, neither of whom may:

(i) be a member of the Utah Supreme Court;

(ii) serve on the same level of court as the other; and

(iii) if trial judges, serve primarily in the same judicial district as the other.

(2) (a) The terms of the members shall be staggered so that approximately half of the commission expires every two years.

(b) Members of the commission may not serve longer than eight years.

(3) The commission shall establish guidelines and procedures for the disqualification of any member from consideration of any matter. A judge who is a member of the commission or the Supreme Court may not participate in any proceedings involving the judge's own removal or retirement.

(4) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed by the appointing authority for that position for the unexpired term.

(b) If the appointing authority fails to appoint a replacement, the commissioners who have been appointed may act as a commission under all the provisions of this section.

(5) Six members of the commission shall constitute a quorum. Any action of a majority of the quorum constitutes the action of the commission.

(6) (a) At each commission meeting, the chair and executive director shall

schedule all complaints to be heard by the commission and present any information from which a reasonable inference can be drawn that a judge has committed misconduct so that the commission may determine by majority vote of a quorum whether the executive director shall draft a written complaint in accordance with Subsection 78A-11-102(2)(b).

(b) The chair and executive director may not act to dismiss any complaint without a majority vote of a quorum of the commission.

(7) It is the responsibility of the chair and the executive director to ensure that the commission complies with the procedures of the commission.

(8) The chair shall be nonvoting except in the case of a tie vote.

(9) The chair shall be allowed the actual expenses of secretarial services, the expenses of services for either a court reporter or a transcriber of electronic tape recordings, and other necessary administrative expenses incurred in the performance of the duties of the commission.

(10) Upon a majority vote of the quorum, the commission may:

(a) employ an executive director, legal counsel, investigators, and other staff to assist the commission; and

(b) incur other reasonable and necessary expenses within the authorized budget of the commission and consistent with the duties of the commission.

(11) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, outlining its procedures and the appointment of masters.

Amended by Chapter 133, 2012 General Session

78A-11-104. Expenses -- Per diem and travel.

A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(1) Section 63A-3-106;

(2) Section 63A-3-107; and

(3) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Repealed and Re-enacted by Chapter 286, 2010 General Session

78A-11-105. Grounds for reprimand, censure, suspension, removal, or involuntary retirement of justice, judge, or justice court judge -- Suspension.

(1) The commission may issue an order, subject to the Supreme Court's review and issuance of a final order implementing, rejecting, or modifying the commission's order, that any judge be reprimanded, censured, suspended, removed from office, or involuntarily retired, for:

(a) action which constitutes willful misconduct in office;

(b) final conviction of a crime punishable as a felony under state or federal law;

(c) willful and persistent failure to perform judicial duties;

(d) disability that seriously interferes with the performance of judicial duties; or

(e) conduct prejudicial to the administration of justice which brings a judicial

office into disrepute.

(2) In addition to the reasons specified in Subsection (1), the Supreme Court shall order the reprimand, censure, suspension, removal, or involuntary retirement of any justice court judge who fails to obtain and maintain certification from the Judicial Council for attendance at required judicial training courses or who fails to meet the minimum requirements for office, including residency.

(3) (a) The Supreme Court may, on its own motion, suspend or remove a judge from office if the judge:

(i) develops a physical or mental disability that seriously interferes with the performance of his judicial duties as provided in the Utah Constitution, Article VIII, Section 13, Paragraph 4;

(ii) becomes unqualified to hold the judicial office as provided in the Utah Constitution, Article VIII, Sections 7 and 10, and Section 78A-2-221; or

(iii) brings the judicial office into disrepute by engaging in conduct prejudicial to the administration of justice as provided in the Utah Constitution, Article VIII, Section 13, Paragraph 5.

(b) The Supreme Court shall provide notice to the judge and an opportunity to be heard.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-11-106. Criminal investigation of a judge -- Administrative leave.

(1) (a) (i) If the commission, during the course of its investigation into an allegation of judicial misconduct, receives information upon which a reasonable person might conclude that a misdemeanor or felony under state or federal law has been committed by a judge other than the chief justice of the Supreme Court, the commission shall immediately refer the allegation and any information relevant to the potential criminal violation to the chief justice of the Supreme Court.

(ii) (A) Unless the allegation is plainly frivolous, the commission shall also immediately refer the allegation of criminal misconduct and any information relevant to the potential criminal violation to the local prosecuting attorney having jurisdiction to investigate and prosecute the crime.

(B) If the local prosecuting attorney receiving the allegation of criminal misconduct of a judge practices before that judge on a regular basis, or has a conflict of interest in investigating the crime, the local prosecuting attorney shall refer the allegation of criminal misconduct to another local or state prosecutor who would not have the same disability or conflict.

(C) The commission may concurrently proceed with its investigation of the complaint without waiting for the resolution of the criminal investigation by the prosecuting attorney.

(b) The chief justice of the Supreme Court may place a justice of the Supreme Court, an appellate court judge, district court judge, active senior judge, juvenile court judge, justice court judge, active senior justice court judge, or judge pro tempore on administrative leave with or without pay if the chief justice has a reasonable basis to believe that the alleged crime occurred, that the justice of the Supreme Court, appellate court judge, district court judge, active senior judge, juvenile court judge, justice court

judge, active senior justice court judge, or judge pro tempore committed the crime, and that the crime was either a felony or a misdemeanor which conduct may be prejudicial to the administration of justice or which brings a judicial office into disrepute.

(2) (a) If the commission, during the course of its investigation into an allegation of judicial misconduct, receives information upon which a reasonable person might conclude that a misdemeanor or felony under state or federal law has been committed by the chief justice of the Supreme Court, the commission shall immediately refer the allegation and any information relevant to the potential criminal violation to two justices of the Supreme Court and the local prosecuting attorney in accordance with Subsection (1)(a)(ii).

(b) Two justices of the Supreme Court may place the chief justice of the Supreme Court on administrative leave with or without pay if the two justices have a reasonable basis to believe that the alleged crime occurred, that the chief justice committed the crime, and that the crime was either a felony or a misdemeanor which conduct may be prejudicial to the administration of justice or which brings a judicial office into disrepute.

(3) (a) If a judge is or has been criminally charged or indicted for a class A misdemeanor or any felony under state or federal law and if the Supreme Court has not already acted under Subsection (1) or (2), the appropriate member or members of the Supreme Court as provided in Subsection (1) or (2), shall place the judge on administrative leave with or without pay pending the outcome of the criminal proceeding.

(b) The administrator of the courts shall, for the duration of the administrative leave, withhold all employer and employee contributions required under Sections 49-17-301 and 49-18-301.

(c) If the judge is not convicted of the criminal charge, and if after an investigation and final disposition of the case by the Judicial Conduct Commission, the judge is reinstated by the Supreme Court as provided in Subsection (4), then the judge shall be paid the salary or compensation for the period of administrative leave, and all contributions withheld under Subsection (3)(b) shall be deposited in accordance with Sections 49-17-301 and 49-18-301.

(4) The chief justice of the Supreme Court or two justices of the Supreme Court who ordered the judge on administrative leave shall order the reinstatement of the judge:

(a) if the prosecutor to whom the allegations are referred by the commission determines no charge or indictment should be filed; or

(b) after final disposition of the criminal case, if the judge is not convicted of a criminal charge and if the commission has not ordered the removal of the judge.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-11-107. Referral of attorney misconduct.

If the commission, during the course of its investigation into an allegation of judicial misconduct, receives information upon which a reasonable person might conclude that a member of the state bar has violated one of the Rules of Professional Conduct, the commission shall refer that information about the attorney to the Office of

Professional Conduct of the Utah State Bar.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-11-108. Involuntary disability retirement or removal of a judge.

(1) The commission shall recommend and issue an order for the removal or involuntary retirement of a judge of any court of this state, in accordance with the procedure outlined in this section, for a disability that seriously interferes with the performance of the judge's judicial duties and which is, or is likely to become, of a permanent character.

(2) The commission shall order a medical examination and report.

(3) The commission in recommending an order of involuntary retirement or removal of a judge for a disability, shall base it on the evaluation and recommendations submitted by one or more medical examiners or physicians, including an examination of essential statements submitted by either bar or judicial associations or committees certifying that:

(a) the judge acquires a physical or mental disability and this disability seriously interferes with the performance of the judge's judicial duties; and

(b) the judge's incapacity is likely to continue and be permanent and that the judge should be involuntarily retired or removed.

(4) (a) The Supreme Court shall review the commission's proceedings as to both law and fact and may permit the introduction of additional evidence.

(b) After its review, the Supreme Court shall issue its order implementing, rejecting, or modifying the commission's order.

(5) Retirement or involuntary retirement as provided in this chapter shall be processed through the Utah State Retirement Office, and the judge retiring shall meet the requirements for retirement as specified in this chapter.

(6) Upon an order for involuntary retirement, the judge shall retire with the same rights and privileges as if the judge retired pursuant to statute.

Amended by Chapter 366, 2011 General Session

78A-11-109. Receipt of complaints.

(1) The commission shall receive and investigate any complaint against a judge.

(2) Unless the complaint alleges criminal misconduct, the commission may decline to investigate any complaint received four or more years after the act or omission which constitutes the alleged misconduct.

(3) During the course of any investigation, the commission may order a hearing to be held concerning the reprimand, censure, suspension, removal, or involuntary retirement of a judge.

(4) The commission shall provide the judge with all information necessary to prepare an adequate response or defense, which may include the identity of the complainant.

Enacted by Chapter 3, 2008 General Session
Amended by Chapter 274, 2008 General Session

78A-11-110. Hearing.

(1) (a) A hearing may be conducted before a quorum of the commission.

(b) Any finding or order shall be made upon a majority vote of the quorum.

(2) Alternatively, the commission may appoint three special masters, who are judges of courts of record, to hear and take evidence in the matter and to report to the commission.

(3) (a) After the hearing or after considering the record and report of the masters, if the commission finds by a preponderance of the evidence that misconduct occurred, it shall order the reprimand, censure, suspension, removal, or involuntary retirement of the judge.

(b) When a commission order is sent to the Supreme Court, it shall also be:

(i) publicly disclosed; and

(ii) sent to the entity that appointed the judge.

(c) In recommending any order, including stipulated orders, the commission may not place, or attempt to place, any condition or limitation upon the Supreme Court's constitutional power to:

(i) review the commission's proceedings as to both law and fact; or

(ii) implement, reject, or modify a commission order.

(4) When the commission issues any order, including a stipulated order, that is sent to the Supreme Court, the record shall include:

(a) the original complaint and any other information regarding violations, or potential violations, of the Code of Judicial Conduct;

(b) the charges;

(c) all correspondence and other documents which passed between the commission and the judge;

(d) all letters which may explain the charges;

(e) all affidavits, subpoenas, and testimony of witnesses;

(f) the commission's findings of fact and conclusions of law;

(g) a transcript of any proceedings, including hearings on motions;

(h) a copy of each exhibit admitted into evidence;

(i) a summary of all the complaints dismissed by the commission against the judge which contained allegations or information similar in nature to the misconduct under review by the Supreme Court;

(j) a summary of all the orders implemented, rejected, or modified by the Supreme Court against the judge; and

(k) all information in the commission's files on any informal resolution, including any letter of admonition, comment, or caution, that the commission issued against the judge prior to May 1, 2000.

Enacted by Chapter 3, 2008 General Session

78A-11-111. Supreme Court action.

(1) Before the implementation, rejection, or modification of any commission order the Supreme Court shall:

(a) review the commission's proceedings as to both law and fact and may permit the introduction of additional evidence; and

(b) consider the number and nature of previous orders issued by the Supreme Court and may increase the severity of the order based on a pattern or practice of misconduct or for any other reason that the Supreme Court finds just and proper.

(2) After briefs have been submitted and any oral argument made, the Supreme Court shall issue its order implementing, rejecting, or modifying the commission's order.

(3) (a) Upon an order for removal, the judge shall be removed from office and his salary or compensation ceases from the date of the order.

(b) Upon an order for suspension from office, the judge may not perform any judicial functions and may not receive a salary for the period of suspension.

Enacted by Chapter 3, 2008 General Session

78A-11-112. Confidentiality.

(1) The transmission, production, or disclosure of any complaints, papers, or testimony in the course of proceedings before the commission, the masters appointed under Section 78A-11-110, or the Supreme Court may not be introduced in any civil action.

(2) The transmission, production, or disclosure of any complaints, papers, or testimony in the course of proceedings before the commission or the masters appointed under Section 78A-11-110 may be introduced in any criminal action, consistent with the Utah Rules of Evidence. This information shall be shared with the prosecutor conducting a criminal investigation or prosecution of a judge as provided in Section 78A-11-106.

(3) Complaints, papers, testimony, or the record of the commission's confidential hearing may not be disclosed by the commission, masters, or any court until the Supreme Court has entered its final order in accordance with this section, except:

(a) upon order of the Supreme Court;

(b) upon the request of the judge who is the subject of the complaint;

(c) as provided in Subsection (4);

(d) to aid in a criminal investigation or prosecution as provided in Section 78A-11-106; or

(e) this information is subject to audit by the Office of Legislative Auditor General, and any records released to the Office of Legislative Auditor General shall be maintained as confidential, except:

(i) for information that has already been made public; and

(ii) the final written and oral audit report of the Legislative Auditor General may present information about the commission as long as it contains no specific information that would easily identify a judge, witness, or complainant.

(4) If the Senate Judicial Confirmation Committee requests Judicial Conduct Commission records, the commission shall disclose the information to the Senate Judicial Confirmation Committee or its staff if the chair of the Senate Judicial Confirmation Committee certifies in writing that the committee will limit the disclosure of any information received to the minimum amount necessary to allow the Senate to evaluate the candidate's fitness for office.

(5) Upon the dismissal of a complaint or allegation against a judge, the dismissal shall be disclosed without consent of the judge to the person who filed the complaint.

Amended by Chapter 114, 2009 General Session

78A-11-113. Subpoena power of the commission -- Testimony -- Contempt.

(1) The commission may issue subpoenas in aid of an investigation of a complaint filed with the commission. The subpoena shall have the same authority as an order of the district court. Commission subpoenas shall be issued in the manner and form prescribed for subpoenas by the Utah Rules of Civil Procedure. Commission subpoenas shall be served in the manner prescribed for subpoenas by the Utah Rules of Civil Procedure.

(2) The commission may administer oaths and compel testimony under oath in aid of an investigation of a complaint filed with the commission and at hearings before the commission.

(3) If a person fails to comply with a subpoena, or if a person appears before the commission and refuses to testify to a matter upon which the person may be lawfully questioned, the person is in contempt of the commission, and the commission may file in the district court a motion for an order to show cause why the penalties established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-12-101. Title.

This chapter is known as the "Judicial Performance Evaluation Commission Act."

Enacted by Chapter 248, 2008 General Session

78A-12-102. Definitions.

As used in this chapter:

(1) "Commission" means the Judicial Performance Evaluation Commission established by this chapter.

(2) "Judge" means a judge or justice who is subject to a retention election.

(3) "Justice" means a judge who is a member of the Supreme Court.

Enacted by Chapter 248, 2008 General Session

78A-12-201. Judicial Performance Evaluation Commission -- Creation -- Membership -- Salary -- Staff.

(1) There is created an independent commission called the Judicial Performance Evaluation Commission consisting of 13 members, as follows:

(a) two members appointed by the president of the Senate, only one of whom may be a member of the Utah State Bar;

(b) two members appointed by the speaker of the House of Representatives, only one of whom may be a member of the Utah State Bar;

(c) four members appointed by the members of the Supreme Court, at least one of whom, but not more than two of whom, may be a member of the Utah State Bar;

(d) four members appointed by the governor, at least one of whom, but not more

than two of whom, may be a member of the Utah State Bar; and

(e) the executive director of the Commission on Criminal and Juvenile Justice.

(2) (a) The president of the Senate and the speaker of the House of Representatives shall confer when appointing members under Subsections (1)(a) and (b) to ensure that there is at least one member from among their four appointees who is a member of the Utah State Bar.

(b) Each of the appointing authorities may appoint no more than half of the appointing authority's members from the same political party.

(c) A sitting legislator or a sitting judge may not serve as a commission member.

(3) (a) A member appointed under Subsection (1) shall be appointed for a four-year term.

(b) A member may serve no more than three consecutive terms.

(4) At the time of appointment, the terms of commission members shall be staggered so that approximately half of commission members' terms expire every two years.

(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(6) (a) Eight members of the commission constitute a quorum.

(b) The action of a majority of the quorum constitutes the action of the commission.

(c) If a vote on the question of whether to recommend a judge be retained or not be retained ends in a tie, the commission may make no recommendation concerning the judge's retention.

Enacted by Chapter 248, 2008 General Session

78A-12-202. Salary and expenses -- Staff.

(1) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(2) The commission shall elect a chair from among its members.

(3) The commission shall employ an executive director and may employ additional staff as necessary within budgetary constraints.

(4) The commission shall be located in the Commission on Criminal and Juvenile Justice.

Amended by Chapter 286, 2010 General Session

78A-12-203. Judicial performance evaluations.

(1) Beginning with the 2012 judicial retention elections, the commission shall prepare a performance evaluation for:

(a) each judge in the third and fifth year of the judge's term if the judge is not a justice of the Supreme Court; and

(b) each justice of the Supreme Court in the third, seventh, and ninth year of the justice's term.

(2) Except as provided in Subsection (3), the performance evaluation for a judge under Subsection (1) shall consider only:

(a) the results of the judge's most recent judicial performance survey that is conducted by a third party in accordance with Section 78A-12-204;

(b) information concerning the judge's compliance with minimum performance standards established in accordance with Section 78A-12-205;

(c) courtroom observation;

(d) the judge's judicial disciplinary record, if any;

(e) public comment solicited by the commission;

(f) information from an earlier judicial performance evaluation concerning the judge; and

(g) any other factor that the commission:

(i) considers relevant to evaluating the judge's performance for the purpose of a retention election; and

(ii) establishes by rule.

(3) The commission shall make rules concerning the conduct of courtroom observation under Subsection (2), which shall include the following:

(a) an indication of who may perform the courtroom observation;

(b) a determination of whether the courtroom observation shall be made in person or may be made by electronic means; and

(c) a list of principles and standards used to evaluate the behavior observed.

(4) (a) As part of the evaluation conducted under this section, the commission shall determine whether to recommend that the voters retain the judge.

(b) (i) If a judge meets the minimum performance standards established in accordance with Section 78A-12-205 there is a rebuttable presumption that the commission will recommend the voters retain the judge.

(ii) If a judge fails to meet the minimum performance standards established in accordance with Section 78A-12-205 there is a rebuttable presumption that the commission will recommend the voters not retain the judge.

(c) The commission may elect to make no recommendation on whether the voters should retain a judge if the commission determines that the information concerning the judge is insufficient to make a recommendation.

(d) (i) If the commission deviates from a presumption for or against recommending the voters retain a judge or elects to make no recommendation on whether the voters should retain a judge, the commission shall provide a detailed explanation of the reason for that deviation or election in the commission's report under Section 78A-12-206.

(ii) If the commission makes no recommendation because of a tie vote, the commission shall note that fact in the commission's report.

(5) (a) Before considering the judicial performance evaluation of any judge, the commission shall notify the judge of the date and time of any commission meeting during which the judge's judicial performance evaluation will be considered.

(b) The commission shall allow a judge who is the subject of a judicial performance evaluation to appear and speak at any commission meeting, except a

closed meeting, during which the judge's judicial performance evaluation is considered.

(c) The commission may meet in a closed meeting to discuss a judge's judicial performance evaluation by complying with Title 52, Chapter 4, Open and Public Meetings Act.

(d) Any record of an individual commissioner's vote on whether or not to recommend that the voters retain a judge is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(e) The commission may only disclose the final commission vote on whether or not to recommend that the voters retain a judge.

(6) (a) The commission shall compile a midterm report of its judicial performance evaluation of a judge.

(b) The midterm report of a judicial performance evaluation shall include information that the commission considers appropriate for purposes of judicial self-improvement.

(c) The report shall be provided to the evaluated judge and the presiding judge of the district in which the evaluated judge serves. If the evaluated judge is the presiding judge, the midterm report shall be provided to the chair of the board of judges for the court level on which the evaluated judge serves.

(7) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the evaluation required by this section.

Amended by Chapter 80, 2011 General Session

78A-12-204. Judicial performance survey.

(1) The judicial performance survey required by Section 78A-12-203 concerning a judge who is subject to a retention election shall be conducted on an ongoing basis during the judge's term in office by a third party under contract to the commission.

(2) The judicial performance survey shall include as respondents a sample of each of the following groups as applicable:

(a) attorneys who have appeared before the judge as counsel;

(b) jurors who have served in a case before the judge; and

(c) court staff who have worked with the judge.

(3) The commission may include an additional classification of respondents if the commission:

(a) considers a survey of that classification of respondents helpful to voters in determining whether to vote to retain a judge; and

(b) establishes the additional classification of respondents by rule.

(4) All survey responses are anonymous, including comments included with a survey response.

(5) If the commission provides any information to a judge or the Judicial Council, the information shall be provided in such a way as to protect the confidentiality of a survey respondent.

(6) A survey shall be provided to a potential survey respondent within 30 days of the day on which the case in which the person appears in the judge's court is closed, exclusive of any appeal, except for court staff and attorneys, who may be surveyed at

any time during the survey period.

(7) Survey categories shall include questions concerning a judge's:

(a) legal ability, including the following:

(i) demonstration of understanding of the substantive law and any relevant rules of procedure and evidence;

(ii) attentiveness to factual and legal issues before the court;

(iii) adherence to precedent and ability to clearly explain departures from precedent;

(iv) grasp of the practical impact on the parties of the judge's rulings, including the effect of delay and increased litigation expense;

(v) ability to write clear judicial opinions; and

(vi) ability to clearly explain the legal basis for judicial opinions;

(b) judicial temperament and integrity, including the following:

(i) demonstration of courtesy toward attorneys, court staff, and others in the judge's court;

(ii) maintenance of decorum in the courtroom;

(iii) demonstration of judicial demeanor and personal attributes that promote public trust and confidence in the judicial system;

(iv) preparedness for oral argument;

(v) avoidance of impropriety or the appearance of impropriety;

(vi) display of fairness and impartiality toward all parties; and

(vii) ability to clearly communicate, including the ability to explain the basis for written rulings, court procedures, and decisions; and

(c) administrative performance, including the following:

(i) management of workload;

(ii) sharing proportionally the workload within the court or district; and

(iii) issuance of opinions and orders without unnecessary delay.

(8) If the commission determines that a certain survey question or category of questions is not appropriate for a respondent group, the commission may omit that question or category of questions from the survey provided to that respondent group.

(9) (a) The survey shall allow respondents to indicate responses in a manner determined by the commission, which shall be:

(i) on a numerical scale from one to five, with one representing inadequate performance and five representing outstanding performance; or

(ii) in the affirmative or negative, with an option to indicate the respondent's inability to respond in the affirmative or negative.

(b) To supplement the responses to questions on either a numerical scale or in the affirmative or negative, the commission may allow respondents to provide written comments.

(10) The commission shall compile and make available to each judge that judge's survey results with each of the judge's judicial performance evaluations.

(11) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the judicial performance survey.

Amended by Chapter 80, 2011 General Session

78A-12-205. Minimum performance standards.

(1) The commission shall establish minimum performance standards requiring that:

(a) the judge have no more than one public reprimand issued by the Judicial Conduct Commission or the Utah Supreme Court during the judge's current term; and

(b) the judge receive a minimum score on the judicial performance survey as follows:

(i) an average score of no less than 65% on each survey category as provided in Subsection 78A-12-204(7); and

(ii) if the commission includes a question on the survey that does not use the numerical scale, the commission shall establish the minimum performance standard for all questions that do not use the numerical scale to be substantially equivalent to the standard required under Subsection (1)(b)(i).

(2) The commission may establish an additional minimum performance standard if the commission by at least two-thirds vote:

(a) determines that satisfaction of the standard is necessary to the satisfactory performance of the judge; and

(b) adopts the standard.

(3) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish a minimum performance standard.

Amended by Chapter 80, 2011 General Session

78A-12-206. Publication of the judicial performance evaluation -- Response by judge.

(1) (a) The commission shall compile a retention report of its judicial performance evaluation of a judge.

(b) The report of a judicial performance evaluation nearest the judge's next scheduled retention election shall be provided to the judge at least 45 days before the last day on which the judge may file a declaration of the judge's candidacy in the retention election.

(c) A report prepared in accordance with Subsection (1)(b) and information obtained in connection with the evaluation becomes a public record under Title 63G, Chapter 2, Government Records Access and Management Act, on the day following the last day on which the judge who is the subject of the report may file a declaration of the judge's candidacy in the judge's scheduled retention election if the judge declares the judge's candidacy for the retention election.

(d) Information collected and a report that is not public under Subsection (1)(c) is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(2) Within 15 days of receiving a copy of the commission's report under Subsection (1)(b):

(a) a judge who is the subject of an unfavorable retention recommendation under this section may:

(i) provide a written response to the commission about the report; and

(ii) request an interview with the commission for the purpose of addressing the

report; and

(b) a judge who is the subject of a favorable retention recommendation under this section may provide a written response to the commission about the commission's report.

(3) (a) After receiving a response from a judge in any form allowed by Subsection (2), the commission may meet and reconsider its decision to recommend the judge not be retained.

(b) If the commission does not change its decision to recommend the judge not be retained, the judge may provide a written statement, not to exceed 100 words, that shall be included in the commission's report.

(4) The retention report of a judicial performance evaluation shall include:

(a) the results of the judicial performance survey, in both raw and summary form;

(b) information concerning the judge's compliance with the minimum performance standards;

(c) information concerning any public discipline that a judge has received that is not subject to restrictions on disclosure under Title 78A, Chapter 11, Judicial Conduct Commission;

(d) a narrative concerning the judge's performance;

(e) the commission's recommendation concerning whether the judge should be retained, or the statement required of the commission if it declines to make a recommendation;

(f) the number of votes for and against the commission's recommendation; and

(g) any other information the commission considers appropriate to include in the report.

(5) (a) The commission may not include in its retention report specific information concerning an earlier judicial performance evaluation.

(b) The commission may refer to information from an earlier judicial performance evaluation concerning the judge in the commission's report only if the reference is in general terms.

(6) The retention report of the commission's judicial performance evaluation shall be made publicly available on an Internet website.

(7) The commission may make the report of the judicial performance evaluation immediately preceding the judge's retention election publicly available through other means within budgetary constraints.

(8) The commission shall provide a summary of the judicial performance evaluation for each judge to the lieutenant governor for publication in the voter information pamphlet in the manner required by Title 20A, Chapter 7, Issues Submitted to the Voters.

(9) The commission may also provide any information collected during the course of a judge's judicial performance evaluation immediately preceding the judge's retention election to the public to the extent that information is not otherwise subject to restrictions on disclosure.

(10) The commission shall provide the Judicial Council with:

(a) the judicial performance survey results for each judge; and

(b) a copy of the retention report of each judicial performance evaluation.

(11) The Judicial Council shall provide information obtained concerning a judge

under Subsection (10) to the subject judge's presiding judge, if any.

Amended by Chapter 80, 2011 General Session